

## FOREWORD

The Oregon Board of Chiropractic Examiners sincerely hopes this information is useful to you---chiropractic physicians, patients and our other stakeholders. Publication of this Guide addresses a key goal of the Board's strategic plan.

The Guide to Policy and Practice Questions is the result of a concerted effort to review the Board's responses to numerous questions over a number of years. As such, it is an ever-evolving document.

This Guide is not intended to reiterate every aspect of Oregon laws and administrative rules affecting the practice of chiropractic health care. It is intended as a further clarification of the Board's governing statutes and administrative rules as well as a guide to answers to many commonly asked questions. The Guide is referenced in the Oregon Administrative Rule (OAR) 811-010-0093.

The Board is well aware that many of these issues will need to be revisited. You are part of that process. You are always welcome to write and request the Board to consider new information or a different point of view.

For issues that involve review of examinations, tests, substances, devices and procedures, the Board requests that you review Appendix A to the Guide which outlines this process, and includes OAR 811-015-0070.

On all issues, what the Board needs most is the best information available on which to base its decisions. That is why the Board values the contributions of associations, colleges, individual practitioners and other interested persons.

You may contact the Board office by writing Oregon Board of Chiropractic Examiners, Attn. Dave McTeague, Executive Director, 3218 Pringle Road SE #150, Salem, Oregon 97302, by email at [oregon.obce@state.or.us](mailto:oregon.obce@state.or.us), or faxing 503-362-1260. Our phone number is 503-378-5816.

Richard E. McCarthy, DC

A handwritten signature in black ink that reads "Richard McCarthy". The signature is written in a cursive style with a long horizontal flourish extending to the right.

President, OBCE



## **OBCE MISSION**

*The mission of the Oregon Board of Chiropractic Examiners is to serve the public, regulate the practice of chiropractic, promote quality, and ensure competent ethical health care.*

### **Outcomes to Achieve**

#### **Public Protection**

- The public will benefit from quality chiropractic care and will be protected from all undue harm by chiropractic physicians. Chiropractic physicians will assure appropriate care for chiropractic patients.
- Transparency and public access to information concerning licensees will be improved without being overly punitive.
- Chiropractic physicians subject to the OBCE's complaint and disciplinary process will be treated equitably and fairly.
- Should a violation be determined, sanctions will be consistent with other violations of a similar nature and proportional to the potential for harm to the public.
- All affected parties will have the right of access to the process. Information will be made available to the extent allowed by law. Confidentiality will be protected to the furthest extent possible.
- Sexual misconduct by licensed Oregon chiropractic physicians will be eliminated.
- Runners, cappers, and unethical excessive treatment will be eliminated.

#### **Professional Competency**

- The Oregon public will be assured of access to high-quality chiropractic health care.
- Candidates for licensure will receive timely examination for professional competency in all areas of chiropractic.
- The public will have confidence that licensed chiropractic physicians in Oregon will have maintained competencies and skills necessary to practice safe and effective chiropractic.

#### **Professional Standards**

- There will be clarity and consistency in administrative rules and standards.
- The Oregon public will be better protected and chiropractic physicians will be better informed about standards of practice based on strong (or high levels of) evidence.
- Patients and chiropractic physicians will have access to a process of critical assessment, which determines whether Examinations, Tests, Substances, Devices or Procedures (ETSDP) are "standard," "investigational," or "unacceptable" for use by chiropractic physicians in Oregon.

### **Liaison/Communication**

- A unified chiropractic presentation to the Legislature and the Public. The OBCE will develop stronger and more effective partnerships with associations, colleges, and other chiropractic stakeholders.
- The chiropractic profession will understand the mission of the OBCE, and where that intersects with its role in public relations. The chiropractic profession will understand the role of the professional associations.
- The public and patients will receive information about the role of the Oregon Board of Chiropractic Examiners and the chiropractic profession. The public will have access to current available information on Oregon chiropractors.
- Patients, public, chiropractic physicians, and other government agencies will have access to policy decisions concerning chiropractic health care and regulation.
- (Board and committee member recruitment) Continued success with quality participants.

### **Diversity**

- The Oregon chiropractic profession and governing bodies will reflect the ethnic and language diversity of the Oregon public and chiropractic patient base.
- The OBCE Affirmative Action Plan will address the goals of the State of Oregon Affirmative Action policy.

Updated September 2007

# TABLE OF CONTENTS

<b>SECTION I.....</b>	<b>11</b>
<b>DEVICES, PROCEDURES, AND SUBSTANCES .....</b>	<b>11</b>
<b>DEVICES.....</b>	<b>12</b>
<i>BIOPTRON LIGHT THERAPY.....</i>	<i>12</i>
<i>BREAST THERMOGRAPHY.....</i>	<i>12</i>
<i>CRYOPROBE.....</i>	<i>12</i>
<i>CTD MARK I MULTI-TORSION TRACTION DEVICE.....</i>	<i>12</i>
<i>DYNATRON 2000.....</i>	<i>12</i>
<i>ENERGY MEDICINE DEVICES.....</i>	<i>12</i>
<i>EPFX/SCIO DEVICE.....</i>	<i>13</i>
<i>EPI TOUCH ALEX HAIR REMOVAL DEVICE.....</i>	<i>13</i>
<i>MAGNETS.....</i>	<i>13</i>
<i>MD PEEL MICRO-ABRASION DEVICE.....</i>	<i>13</i>
<i>MICROCURRENT DEVICES.....</i>	<i>13</i>
<i>MICROLIGHT 830/COLD LASER THERAPY.....</i>	<i>13</i>
<i>PETROMETER.....</i>	<i>13</i>
<i>TENS DEVICES.....</i>	<i>13</i>
<i>TOFTNESS DEVICE.....</i>	<i>13</i>
<b>PROCEDURES.....</b>	<b>14</b>
<i>ACUPUNCTURE.....</i>	<i>14</i>
<i>ACUPUNCTURE USED AS ANESTHESIA FOR MANIPULATION.....</i>	<i>14</i>
<i>“ALPHA-STIM” M.E.T. PROTOCOLS AND C.E.S.....</i>	<i>14</i>
<i>APPLIED SPINAL BIOMECHANICAL ENGINEERING (ASBE).....</i>	<i>14</i>
<i>AURICULOTHERAPY.....</i>	<i>14</i>
<i>AUTOMATED MUSCLE TESTING.....</i>	<i>14</i>
<i>BIOFEEDBACK.....</i>	<i>14</i>
<i>BLOOD PRESSURE (SUPINE AND STANDING).....</i>	<i>14</i>
<i>BLOOD WITHDRAWAL.....</i>	<i>14</i>
<i>BLOODBORNE PATHOGENS - STANDARDS, PROCEDURES.....</i>	<i>15</i>
<i>CONTACT REFLEX ANALYSIS.....</i>	<i>15</i>
<i>CRANIOSACRAL MANIPULATION.....</i>	<i>15</i>
<i>EKGS.....</i>	<i>15</i>
<i>ELECTRODIAGNOSTIC TESTING (SSEP).....</i>	<i>15</i>
<i>ELECTROLYSIS.....</i>	<i>15</i>
<i>ELECTROTHERAPY.....</i>	<i>15</i>
<i>EMG AND SURFACE EMG TESTING.....</i>	<i>15</i>
<i>FISSURECTOMY.....</i>	<i>15</i>
<i>GALVANIC ELECTRICITY.....</i>	<i>16</i>
<i>HEMORRHOIDS (TREATMENT OF).....</i>	<i>16</i>
<i>INJECTIONS.....</i>	<i>16</i>
<i>IMMEDIATE RELEASE TECHNIQUE (IRT) / RAPID EYE TECHNIQUE.....</i>	<i>16</i>
<i>KEESEY TECHNIQUE.....</i>	<i>16</i>
<i>KINESIOTAPING METHOD.....</i>	<i>16</i>
<i>LASER LIGHT THERAPY.....</i>	<i>16</i>
<i>LINGUAL ASCORBIC ACID TEST.....</i>	<i>18</i>
<i>MANIPULATION OF THE CERVICAL SPINE.....</i>	<i>18</i>
<i>MANIPULATION UNDER ANESTHESIA.....</i>	<i>18</i>
<i>N.A.E.T. NAMBUDRIPAD ALLERGY ELIMINATION TECHNIQUE.....</i>	<i>18</i>
<i>NASAL SPECIFICS.....</i>	<i>18</i>
<i>NCV - NERVE CONDUCTION VELOCITY.....</i>	<i>18</i>
<i>OUTPATIENT AND RADIOLOGICAL TESTS.....</i>	<i>18</i>
<i>PARASPINAL SURFACE EMG.....</i>	<i>18</i>
<i>POSTURAL SCREENING.....</i>	<i>18</i>
<i>PULMONARY STUDIES.....</i>	<i>18</i>
<i>RANGE OF MOTION REPORTING.....</i>	<i>18</i>
<i>RAPID EYE TECHNIQUE (RET).....</i>	<i>19</i>

RAST TESTING .....	19
REIKI (Also see Reiki under Chiropractic Assistants).....	19
SOLKOWICH CALCIUM ABSORPTION AND UTILIZATION .....	19
SOMATIC TECHNIQUE.....	19
SPINAL (POSTURAL) SCREENING .....	19
SPUTUM ALCOHOL TESTING .....	19
STRESS TESTS.....	19
TMJ (TEMPOROMANDIBULAR JOINT) .....	19
TRIGGER POINT INJECTIONS (MYOFASCIAL) .....	19
ULTRASOUND .....	19
URINALYSIS .....	19
VENIPUNCTURE .....	20
<b>SUBSTANCES .....</b>	<b>20</b>
ALOE VERA GEL (FOR ORAL CONSUMPTION AND/OR TOPICAL USE).....	20
AQUA-SOOTHE .....	20
BOTANICALS .....	20
CLINICAL NUTRITION.....	20
COLLOIDAL SILVER.....	20
ETHYL CHLORIDE .....	20
FLUORIMETHANE .....	20
FORMULA 303 .....	20
INTRADERMALS.....	20
LIDOCAINE AND SALICYLATES.....	21
LIDOCAINE INJECTIONS.....	21
MATOL AND FIBER SONIC (FIBER SUPPLEMENT).....	21
MYOCIDE.....	21
ORIENTAL HERBS.....	21
OVER-THE-COUNTER NON-PRESCRIPTION DRUGS .....	21
OVER-THE-COUNTER SUBSTANCES, DOSAGES.....	21
OXYGEN (NOT allowed for therapeutic purposes).....	21
OXYGEN CONCENTRATION .....	21
OXYGEN USE IN EMERGENCIES.....	21
SALICYLATES AND LIDOCAINE.....	22
VITACEL.....	22
VITAMIN C WITH ECHINACEA.....	22
VITAMINS WITH BOTANICALS .....	22
<b>SECTION II .....</b>	<b>23</b>
<b>PRACTICE POLICIES REGARDING CHIROPRACTORS, APPLICANTS, AND CERTIFIED CHIROPRACTIC ASSISTANTS.....</b>	<b>23</b>
<b>CHIROPRACTORS .....</b>	<b>24</b>
ABANDONMENT.....	24
ADVERTISING REVIEW POLICY: (UPDATED APRIL 27, 2010).....	24
ANCILLARY SERVICES .....	25
ANIMALS, TREATMENT OF.....	25
ATHLETIC TRAINERS, SUPERVISION.....	26
BIRTH CERTIFICATES.....	26
CHIROPRACTORS AND OTHER HEALTH LICENSES.....	26
CLINICAL JUSTIFICATION RULE POLICY .....	26
COMPUTERIZED SOAP NOTES.....	27
CONTINUING EDUCATION .....	27
Additional & Specific CE Requirement .....	27
Approval of Courses or Activities “not specifically listed” in the OAR.....	27
Board Member CE Allowance.....	28
Credit Taken 13 Months Prior to Renewal .....	28
Educational Manual for Evidenced Based Chiropractic Chapters .....	28
National Board of Chiropractic Examiners (NBCE) PACE approved programs.....	28
National Board of Chiropractic Examiners Part IV Exam Assistants .....	28
Practice Guidelines Committees (including Steering Committee, Nominal Panel and Seed Panels) .....	28
Teaching at a Health-Care Institution or Teaching Post-Graduate Education .....	29
COUNSELING PATIENTS .....	29

DEATH CERTIFICATES .....	29
DIABETIC EDUCATION.....	29
DIPLOMATE STATUS.....	29
DMV'S MEDICALLY AT-RISK DRIVER PROGRAM.....	29
DOCTORS' TITLE ACT, ORS 676 (2011).....	30
EMERGENCY FIRST AID.....	31
FAMILY/RELATIVES, TREATMENT OF.....	31
FEE SPLITTING AND COMMISSIONS.....	31
ABS Health Center, Inc Marketing Plan.....	31
Adjustments or Other Minor Gifts for Patient Referrals.....	32
Commissions and Fees.....	32
Donating to a Non-Profit.....	32
Leasing Agreements and Professional Referrals.....	32
HIPAA - IMMINENT DANGER EXCEPTION.....	33
INACTIVE LICENSE.....	33
INDEPENDENT MEDICAL EXAMINATION (I.M.E.).....	34
LYME DISEASE.....	35
MASSAGE THERAPIST, SCOPE OF PRACTICE.....	35
MINOR SURGERY CERTIFICATION.....	35
MOTOR CARRIER PHYSICALS.....	35
MULTI-DISCIPLINE CLINICS.....	36
Employee status.....	37
Independent Contractor.....	37
NETWORK CHIROPRACTIC.....	37
PARENTAL CONSENT.....	38
PATIENT-CHIROPRACTOR RELATIONSHIP.....	38
PATIENT, DEFINITION.....	38
PATIENT RECORDS.....	38
Disclosure of Deceased Patient Records.....	38
Faxed Records Requests.....	39
Ownership of patient records.....	39
Release of patient records.....	39
POST-DOCTORAL DIPLOMATES, USE OF INITIALS.....	40
PRIMARY CARE PHYSICIANS.....	40
PYRAMID SELLING.....	40
REFLEXOLOGY (also listed under Chiropractic Assistants).....	40
REVOKED CHIROPRACTORS (WHAT THEY MAY AND MAY NOT DO).....	40
SATELLITE OFFICES.....	41
SCHOOL PHYSICALS.....	41
STUDENT LOANS, DELINQUENT.....	41
Federal Health Education Assistance Loan (Heal).....	42
TELEMARKETING.....	42
TRAVEL-TO-TREAT.....	42
X-RAY SERVICES BY CHIROPRACTIC PHYSICIAN.....	42
X-RAY (Which Views Are Necessary?).....	43
<b>APPLICANTS (FOR CHIROPRACTIC).....</b>	<b>43</b>
DISCLOSURE OF SCHOOL RECORDS.....	43
EXAMINATION.....	43
Appeals.....	43
Exam Schedules.....	43
National Board of Chiropractic Examiners (NBCE) Part IV.....	43
Physiotherapy Minimum Educational Requirement.....	43
Special Purposes Examination for Competency (SPEC).....	43
Waivers (from application/examination deadlines).....	44
FELONY RECORD.....	44
PRE-PROFESSIONAL LIBERAL ARTS AND SCIENCES POLICY.....	44
WORKING UNDER A LICENSED CHIROPRACTOR.....	44
<b>CERTIFIED CHIROPRACTIC ASSISTANTS.....</b>	<b>44</b>
ANY TRAINED PERSON (INCLUDING CERTIFIED CAS) MAY PERFORM THE FOLLOWING.....	44
COLONICS OR COLONIC THERAPY.....	45
COMPUTERIZED MUSCLE AND INCLINOMETER TESTING.....	45
(DIRECT) SUPERVISION OF CLINIC STAFF.....	45
ENGLISH PROFICIENCY REQUIREMENT FOR CA APPLICANTS.....	45

<i>FELONY RECORD</i> .....	45
<i>INITIAL TRAINING FOR CA APPLICANTS</i> .....	45
Chiropractic Students Training To Be Chiropractic Assistants .....	45
Massage Therapists.....	46
Physical Therapist Assistants.....	46
Supervising DC, Training by the .....	46
<i>IONTOPHORESIS</i> .....	46
<i>KINESIOTAPING METHOD</i> .....	46
<i>LASER LIGHT THERAPY (Excerpt of Laser Light Therapy in Section I-Procedures)</i> .....	46
<i>PHONOPHORESIS (See Iontophoresis)</i> .....	46
<i>RANGE OF MOTION</i> .....	46
<i>REFLEXOLOGY</i> .....	47
<i>REIKI</i> .....	47
<i>TERMINOLOGY</i> .....	47
<i>WORKING FOR OTHER HEALTH-CARE PROVIDERS</i> .....	47
<b>SECTION III</b> .....	<b>48</b>
<b>OBCE GOVERNANCE</b> .....	<b>48</b>
<i>BOARD-EXECUTIVE DIRECTOR RELATIONSHIP</i> .....	49
<i>EXECUTIVE LIMITATIONS POLICY</i> .....	49
<i>GOVERNING MANNER</i> .....	49
Board Committees .....	49
Board Meetings.....	49
Board Member Obligations .....	50
Board Officers .....	50
Board Performance .....	50
Diversity and Consensus.....	50
Parliamentary Procedure.....	50
Trusteeship .....	50
<b>SECTION IV</b> .....	<b>51</b>
<b>ADMINISTRATIVE OFFICE POLICIES AND PROCEDURES</b> .....	<b>51</b>
<i>CONTESTED CASE PROCEEDINGS</i> .....	52
Depositions .....	52
Recusal - in Complaint Review and Contested Case Proceedings.....	52
Settlement Conferences .....	52
<i>DISCLOSURE POLICY (WHAT IS PUBLIC &amp; WHAT IS NOT)</i> .....	52
<i>ELECTRONIC INFORMATION ASSETS POLICY</i> .....	53
<i>EXAMINATION</i> .....	53
Analysis and Questions.....	53
Item Review.....	53
Approval of Examination Results.....	53
Review of Individual Test Results.....	54
<i>EXPERIMENTAL LIST OF EQUIPMENT AND PROCEDURES</i> .....	54
<i>FINAL ORDER BY DEFAULT</i> .....	54
<i>LIENS AGAINST REAL PROPERTY</i> .....	54
<i>MEETING MINUTES</i> .....	54
<i>PEER REVIEW</i> .....	55
<i>PRESS RELEASES</i> .....	55
<i>RENEWAL</i> .....	55
“Grace Period” Post-Renewal.....	55
Renewals Received during the Grace Period.....	55
<i>SEXUAL MISCONDUCT</i> .....	55
<i>SOCIAL SECURITY NUMBERS</i> .....	56
<b>APPENDIX A</b> .....	<b>57</b>
<b>EXAMINATIONS, TESTS, SUBSTANCES, DEVICES, AND PROCEDURES (ETS DP)</b> .....	<b>57</b>
<i>EVALUATION FORM</i> .....	59
<i>E.T.S.D.P. EVALUATION QUESTIONS</i> .....	60
<i>OREGON ADMINISTRATIVE RULE 811-015-0070 E.T.S.D.P.</i> .....	61

**APPENDIX B ..... 64**

**AUTHORIZATION TO USE AND DISCLOSE PROTECTED HEALTH INFORMATION ..... 64**

**APPENDIX C..... 70**

**STANDARDS FOR USE OF BREAST THERMOGRAPHY IMAGING IN CHIROPRACTIC PRACTICE ..... 70**



# **SECTION I**

## **Devices, Procedures, and Substances**

## DEVICES

### **BIOPTRON LIGHT THERAPY**

The Bioptron Light Therapy Unit is approved by the FDA and the Board as a standard device. (3/16/95)

### **BREAST THERMOGRAPHY**

The Oregon Board of Chiropractic Examiners has determined that breast thermography is investigational. Investigational means further study is warranted, evidence is equivocal or insufficient, the patient has to evaluate their own risk and it is not standard. Standard means that it is taught in a chiropractic college or otherwise accepted in the chiropractic profession.

Clinical breast thermography is an investigational procedure that may be performed by a doctor or technician who has been adequately trained and certified by a recognized organization. However, the interpretation of the thermal images will only be made by health care providers who are licensed to diagnose and hold credentials as board certified clinical thermographers or diplomates from a recognized organization. This is meant to insure that directed care and proper follow-up recommendations will be made available to the patient if warranted by the interpretation of the images.

Any chiropractic clinic providing breast thermography imaging must use the informed consent form (Appendix C). This is in addition to verbal communication with the patient to ensure their understanding of these informed consent provisions, the investigational status and that this is adjunctive to other standard diagnostic imaging or examination.

The full guidelines and required Informed Consent form can be found in Appendix C of this Guide. (3/31/10)

### **CRYOPROBE**

This device uses compressed nitrous oxide gas to freeze to a depth of 5mm on the human skin. The OBCE approved this (and similar devices) as a standard minor surgery procedure. (3/18/10)

### **CTD MARK I MULTI-TORSION TRACTION DEVICE**

The CTD Mark I Multi-torsion Traction Device (used as part of the non-surgical treatment for carpal tunnel syndrome) is approved. (4/20/95)

### **DYNATRON 2000**

The Dynatron 2000 computerized muscle-testing device is a standard device for use by chiropractors in Oregon. The Board makes no assertion of its validity. The standard designation does not imply that use of the device is per se medically necessary. (5/15/97)

### **ENERGY MEDICINE DEVICES**

The OBCE receives periodic inquiries regarding so-called “energy” medicine devices which purport to use: “quantum mechanics” or “quantum biofeedback” or “nano-technology” or claims in any way to have thousands of “preprogrammed scenarios and library references organized into defined groups, which create quick and manageable patient assessments.”

These are presumed to be outside the Oregon chiropractic scope of practice until such time the specific device is reviewed by the OBCE under the provisions of OAR 811-015-0070 (ETSDP rule) and determined to be either standard or investigational.

This includes the “Zyto” device, Quantum QXCI Bio-Resonance Device, and any other devices which are similar in operation to the EFPX-SCIO device (which was previously evaluated and found to be unacceptable). (5/27/10)

### **EFPX/SCIO DEVICE**

The OBCE determined the EFPX/SCIO device is unacceptable for use by chiropractic physicians in Oregon. They also voted to consider this device again if there is a new USA-FDA, or new USA- FDA-IRB (investigational review board) clearance. (*UPDATE: Dec 2007 Seattle Times article, “[FDA Bans Import of Unproven Machine.](#)”*)

The Board is concerned about this device’s biofeedback features, which appear to be more passive than active. (active biofeedback being standard for chiropractic in Oregon). There is also real concern with the device’s purported ability to recognize if not diagnose a huge number of conditions based on the body’s response to micro current stimulation.

Following review by the ETSDP Committee, the OBCE spent numerous hours over the course of three meetings to review this device. This is the first time since the ETSDP rule was adopted in 1995 that an “unacceptable” determination has been the result of this review. For more information concerning this decision see the OBCE’s public meeting minutes for February, March and May of 2007 on the Board’s Web page.

### **EPI TOUCH ALEX HAIR REMOVAL DEVICE**

EPI Touch Alex hair removal device is approved as a minimal risk investigational minor surgery procedure. (9/24/99)

### **MAGNETS**

A review of magnets revealed a lack of quality clinical evidence either supporting or opposing the use of magnets for pain relief. Magnets are not prohibited for use by chiropractors. However, it would be inaccurate for anyone to represent that the Board has “approved” the use of magnets. (7/27/00)

### **MD PEEL MICRO-ABRASION DEVICE**

The MD Peel Micro-abrasion device is approved as a minimal risk investigational minor surgery procedure. (9/24/99)

### **MICROCURRENT DEVICES**

Chiropractors may prescribe micro-current devices to their patients. (9/19/94)

### **MICROLIGHT 830/COLD LASER THERAPY**

The use of the Microlight 830 is taught at some chiropractic colleges, and is therefore considered “standard” in Oregon, and determined to be within the scope of chiropractic. (7/17/03) (Also see “Laser Light Therapy” under Section I – Procedures.)

### **PETROMETER**

The instrument called the Petrometer, used to measure range of motion, is considered standard instrumentation already in use. (12/15/94)

### **TENS DEVICES**

Chiropractors may prescribe TENS devices to their patients. (9/19/94)

### **TOFTNESS DEVICE**

The Toftness device, banned by the FDA, may not be used. (6/22/95)

In January 1982, the United States District Court in Wisconsin issued a permanent nationwide injunction against the manufacturing, promoting, selling, leasing, distributing, shipping, delivering, or using in any way any Toftness Radiation Detector or any article or device that is substantially the same as, or employs the same basic principles as, the Toftness Radiation Detector. The United States Court of Appeals for the Seventh Circuit upheld this decision in 1984.

The basis of the United States Government's case was that these devices were misbranded under the Food, Drug and Cosmetic Act, because they could not be used safely or effectively for their intended purposes. Consequently, Oregon licensees should cease and desist using a Toftness or Toftness-like device. (1/17/91)

## **PROCEDURES**

### **ACUPUNCTURE**

The Board has determined that needle acupuncture is outside the Oregon chiropractic scope of practice. (ORS 684.035, Chapter not applicable to other methods of healing)

### **ACUPUNCTURE USED AS ANESTHESIA FOR MANIPULATION**

**(See Also Manipulation Under Anesthesia)**

MUA is specific to hospital setting. There are no specific statutes or rules concerning the use of acupuncture as the anesthetic. The Board suggests writing the Board of Medical Examiners to get their views on this subject. (4/16/92)

### **"ALPHA-STIM" M.E.T. PROTOCOLS AND C.E.S.**

**After review, the Board determined that this technique is okay for neuromusculoskeletal conditions ONLY, but not mental health conditions. (11/19/09)**

### **APPLIED SPINAL BIOMECHANICAL ENGINEERING (ASBE)**

The Board determined that ASBE is investigational and must comply with the investigational rule and the rule on informed consent. Chiropractors using ASBE must register their use of this technique with the Board of Chiropractic Examiners. Patients must be informed that the technique is considered investigational and consent must be in writing to its use in their case.

### **AURICULOTHERAPY**

After review by the ETSDP Committee and a recommendation to the Board, the Board has determined that auriculotherapy, the device used and the therapy, is standard. The therapy is performed without needles; it is a form of electro acupuncture. The procedure has been taught in CCE colleges. (11/16/06)

### **AUTOMATED MUSCLE TESTING**

The Board determined that automated muscle testing is within the scope of practice and is accepted in the P & U Vol. I Guidelines. A chiropractor needs to show rationale for using automated muscle testing. (9/21/95)

### **BIOFEEDBACK**

Chiropractors may order or perform biofeedback. (4/15/96)

### **BLOOD PRESSURE (SUPINE AND STANDING)**

Supine and standing blood pressure are within the scope of chiropractic practice. (11/21/91)

### **BLOOD WITHDRAWAL**

See VENIPUNCTURE

## **BLOODBORNE PATHOGENS - STANDARDS, PROCEDURES**

Effective July 1992, Oregon Occupational Safety and Health Division (OR-OSHA) adopted the Federal standard on Bloodborne Pathogens. Oregon Chiropractors are required to implement the standards in their clinics.

Oregon OSHA has adopted the Federal OSHA Final Standard on Bloodborne Pathogens. The purpose of the standard is to limit and control occupational exposure to blood and other potentially infectious materials. This law covers all employees who could reasonably be expected to come in contact with human blood or other potentially infectious materials in the course of their work. Therefore, if you employ people in your clinic that may be subject to exposure to blood or other bodily fluids, this law may have a direct effect on you. **IT IS YOUR RESPONSIBILITY TO DETERMINE IF THIS LAW APPLIES TO YOU.** The staff of the Oregon Board of Chiropractic Examiners does not have the expertise to advise you in matters related to this law.

Call or write OR-OSHA (Salem Central Office, 350 Winter St. NE, Rm. 430, Salem, OR 97310 (503) 378-3272 or 1-800-922-2689. Request Oregon Administrative Rule 437-Division 2, Bloodborne Pathogens (1910.1030) and/or Questions & Answers About Bloodborne Pathogens.

## **CONTACT REFLEX ANALYSIS**

Contact reflex analysis is within the scope of chiropractic practice. (4/21/94)

## **CRANIOSACRAL MANIPULATION**

As part of Craniosacral Therapy, Craniosacral Manipulation is a standard chiropractic procedure. (1/21/93)

## **EKG'S**

Chiropractors may order or perform EKG's. (4/15/93)

## **ELECTRODIAGNOSTIC TESTING (SSEP)**

Performing an SSEP electrodiagnostic test is within the scope of chiropractic practice. (1/18/96)

## **ELECTROLYSIS**

This procedure was reconsidered by the Board. "A person uses an electrical device that is not used for physical therapy. The tissue is destroyed so the hair does not grow back. It is a surgical intervention where you are changing the tissue type." The Board determined that electrolysis (i.e. removal of hair) is a minor surgical procedure and requires specialty certification by the Board to perform. (11/20/03)

## **ELECTROTHERAPY**

Chiropractic Physicians may treat hemorrhoids with electrotherapy, specifically, the application of negative low voltage galvanic current (known as the Keesey technique) to the hemorrhoid. ORS Chapter 684.010(2)(a) and (5).

This therapy is approved and is considered as standard in the above-described manner and shall not be considered investigational by the Board. The Board recognizes that undergraduate and postgraduate courses at Western States Chiropractic College, a Council on Chiropractic Education accredited school, have included the teaching of this therapy for more than thirty years. (3/25/91)

## **EMG AND SURFACE EMG TESTING**

Any trained individual, including certified chiropractic assistants, may apply electrodes and conduct surface EMG testing, but the doctor has to interpret the results. (11/16/95, 7/18/96)

## **FISSURECTOMY**

This procedure is within the scope of practice for chiropractic physicians in Oregon. (1/28/92)

## **GALVANIC ELECTRICITY**

See ELECTROTHERAPY

## **HEMORRHOIDS (TREATMENT OF)**

See ELECTROTHERAPY

## **INJECTIONS**

Can a licensee refer a patient to an MD for an injection (e.g. to a facet joint for pain relief) without the MD having to evaluate the patient him or herself?

The Board determined that a licensee may refer to the MD for the examination, but it is up to the MD to determine whether he/she needs to perform an additional examination and how to proceed. (11/9/00)

## **IMMEDIATE RELEASE TECHNIQUE (IRT) / RAPID EYE TECHNIQUE**

Recently the ETSDP committee recommended, and the OBCE accepted that IRT (Immediate Release Technique) may be used by Chiropractors under the investigational rule (reference below). IRT involves eye exercises combined with forms of acupressure and chiropractic adjusting. The eye exercises are shown to affect brain activity that can alter pain states. There is a growing amount of clinical correlation showing that the brain function changes can/may change endocrine function associated with stress states. The military is investigating use of similar treatment procedures with veterans suffering with PTSD (post-traumatic stress disorder).

However, RET (Rapid Eye Technique), a technique that extends the treatment time and complexity to involve psychological counseling, is counseling/psychology and is NOT a chiropractic procedure. The OBCE will allow RET courses as continuing education similar to other adjunct treatment education, such as OHSU programs on surgical procedures. (May 2008)

## **KEESEY TECHNIQUE**

See ELECTROTHERAPY

## **KINESIOTAPING METHOD**

May a certified Chiropractic Assistant perform “Kinesio Taping”? The Kinesio Taping Method involves taping over and around muscles in order to assist and give support to, or prevent, over-contraction. The Board determined if the supervising DC is trained in the taping method, that he or she may also train the certified CA also to perform the method in the clinic, and only while the DC is on premise. The Board considers this a physiotherapy. (3/15/07)

## **LASER LIGHT THERAPY**

A variety of low-level laser and light therapy (LLLT a.k.a. phototherapy) is available to Oregon chiropractic physicians as a standard treatment for NMS conditions. Western States and other chiropractic colleges have current core curriculum on this subject. In addition, WSCC is continuing work on future curriculum to cover advances and new applications in technology of this field. LLLT has been used to speed wound healing, stimulate tissue repair, reduce swelling and edema, and reduce acute and chronic pain. LLLT has been popular in Europe and Asia. More recently, in 2002, the United States FDA granted 510 (k) clearances allowing for healing and pain relief with various soft tissue disorders including carpal tunnel, rheumatoid arthritis, bursitis, tendonitis and more.

Following recommendations from the OBCE ETSDP committee (a.k.a. Examinations, Tests, Substances, Devices, And Procedures), the OBCE approved and reaffirmed as standard use of Class I-IIIa lasers/phototherapy for use by chiropractors (as well as certified chiropractic assistants!) as a physiotherapy modality.

The OBCE also approved use of Class IIIb & IV “hot” lasers for use by chiropractic physicians to treat NMS conditions. (*See the Board’s more recent determination for Class IIIb & IV laser therapy for cosmetic purposes at the end of this policy discussion.*) Expect requirements for DCs to obtain certification limited to treatment of benign superficial lesions, lacerations/abrasions, and removal of superficial foreign bodies.)

Chiropractors must be properly trained for use of all LLLT, especially Class IIIb & IV. Training is usually available from the vendors of these devices. Class IIIb for NMS conditions does not require detailed special training other than provided by vendors, however use of Class IV devices requires strict adherence to safety protocols. Minor surgery training, of course, should be more extensive.

Phototherapy involves the application of specific wavelengths of light energy capable of penetrating into tissue and being absorbed by cells. Light energy can be produced by low level laser and/or super luminous diodes (SLDs). Sufficient energy must be delivered to target tissue to trigger a response. Light is absorbed by irradiated tissue where the light energy is transformed into biochemical energy, which is then available for photochemical cell activities.

The FDA has classified lasers into six categories based on their potential damage to the eye. They are:

- Class 1: Safe to human eye or contained within device, no labeling required.
- Class 2: Low power lasers with output less than 1 mW. Labeled, “CAUTION – Laser Radiation: Do not stare into beam”
- Class 2a: Eye damage can occur if laser enters eye more than 1,000 seconds. Labeled: “CAUTION- Laser Radiation: Do not stare into beam”
- Class 3a: Power output up to 5 mW. Direct eye contact for short periods is not hazardous, but viewing laser through magnifying optics such as eyeglasses can present a hazard. Labeled: “CAUTION- Laser Radiation: Do not stare into beam or view directly with optical instruments.”
- Class 3b: Involves certain risk. Laser output 5mW to 500 mW. Labeled “DANGER – Visible and/or invisible laser radiation – avoid direct exposure to beam.”
- Class 4: High power lasers with output greater than 500 mW. Involves definite risk. Labeled “DANGER – Visible and/or invisible laser radiation – avoid eye or skin exposure to direct or scattered beam.”

According to Western States instructor Joel Agresta PT, DC, a patient treated with Class IV must wear goggles. “Class IV lasers have great benefits if handled properly and can deliver more energy in less time, but proper training and understanding of the contraindications is imperative. As far as I understand, the manufacturers (i.e., K-Lasers and Avicenna) issue specific protocols that keep these lasers safe for NMS conditions. These protocols have some degree of safety built into them. By their nature they do require a higher level of safety precaution, but when following the programmed protocols it appears that they are safe.”

He also said by law, Class III and above must be stored in a locked cabinet. Dr. Agresta says that “photo-biostimulation” stimulates or speeds up the inflammatory process and resultant healing when lower doses are used. However, he says that at higher doses starting around 100 to 200 Joules/cm<sup>2</sup> (Joules/cm<sup>2</sup> = power/beam area x time) inhibitory or negative effects may occur.

The ETSDP Committee and the OBCE reviewed a wealth of published clinical literature which documents many therapeutic applications of LLLT. (12/20/06)

The Board has received legal advice that LLLT for *purely cosmetic conditions*, such as hair removal, which do not address a skin condition or pathology, is not within the current scope of chiropractic practice. To the board’s knowledge, this is not currently taught in any chiropractic college course. (If this changes, the OBCE can revisit this issue.) (9/28/07)

### **LINGUAL ASCORBIC ACID TEST**

Lingual ascorbic acid test is within the scope of chiropractic practice. (11/21/91)

### **MANIPULATION OF THE CERVICAL SPINE**

Classic, diversified, and Gonstead-type manipulation of the cervical spine are standard procedures. Chiropractors may contact National Chiropractic Mutual Insurance Company for information on the risk factors of these procedures. (5/16/96)

### **MANIPULATION UNDER ANESTHESIA**

Manipulation under Anesthesia is within the scope of practice for Chiropractic Physicians in Oregon. (1/28/92)

In review of this procedure, the Board found that Texas Chiropractic College teaches a continuing education course in Manipulation Under Anesthesia and offers a preceptorship program. The Board expects that hospitals involved with MUA will require proper training of Doctors of Chiropractic before allowing them to perform this procedure.

### **N.A.E.T. NAMBUDRIPAD ALLERGY ELIMINATION TECHNIQUE**

After reviewing the details of this technique, the Board determined that, as described, it is allowable within the scope of chiropractic practice in Oregon, excepting the application of needle acupuncture. (12/19/00)

### **NASAL SPECIFICS**

Chiropractors may not use local anesthesia for performing nasal specifics. (5/16/96)

### **NCV - NERVE CONDUCTION VELOCITY**

(performed by a technician)

Chiropractors in Oregon may order or perform nerve conduction velocity testing. Recently the Board was asked if there is any licensure requirements for a technician who performs this test on behalf of the chiropractor and/or testing service. They determined that no special certification is required by chiropractors or any other trained person to perform NCV testing in Oregon (technical component only).

That said, the Board does have serious concerns due to persistent reports of testing services that charge excessive fees. The Board also has concerns with reports it has received regarding the billing practices associated with NCV and other kinds of diagnostic testing. The Board advises that these tests should meet basic criteria of medical necessity. (04/01)

### **OUTPATIENT AND RADIOLOGICAL TESTS**

Chiropractors may order outpatient laboratory and radiological tests from hospitals. A chiropractor may order any test a hospital has available. (5/16/96)

### **PARASPINAL SURFACE EMG**

Paraspinal surface EMG is within the scope of practice. (8/20/92)

### **POSTURAL SCREENING**

See SPINAL (POSTURAL) SCREENING

### **PULMONARY STUDIES**

Ordering pulmonary studies is within the scope of chiropractic practice. (9/21/95)

### **RANGE OF MOTION REPORTING**

When reporting range of motion (ROM) measurements, the method of measurement should be noted, e.g.

visual, goniometer, or inclinometer (single or double). The preferred method of measurement is with the goniometer in the extremities and the double inclinometer in the spine. Effort should be made to obtain reproducible measurements. (1/16/97)

### **RAPID EYE TECHNIQUE (RET)**

See Immediate Release Technique in this section above (May 2008)

### **RAST TESTING**

RAST Testing is within the scope of practice. (6/18/92)

### **REIKI (Also see Reiki under Chiropractic Assistants)**

A Doctor of Chiropractic asked if his certified Chiropractic Assistant may practice Reike, a form of massage therapy, in his office without his supervision. The Board determined that the certified CA may perform this type of massage ONLY if the supervising DC is also Reike trained, and on premise to supervise. If the certified CA, trained in Reiki, is also an Oregon licensed massage therapist, then that is already allowed with the LMT scope of practice. (3/15/07)

### **SOLKOWICH CALCIUM ABSORPTION AND UTILIZATION**

Solkowich calcium absorption and utilization are within the scope of chiropractic practice. (11/21/91)

### **SOMATIC TECHNIQUE**

The Board approved the somatic technique as a standard technique. Somatic technique is a neuromuscular reeducation or active muscle relaxation technique. It is taught at Palmer College West. (10/17/96)

### **SPINAL (POSTURAL) SCREENING**

Any properly trained person may do postural screening under the onsite supervision of a chiropractic physician, but only a chiropractic physician may interpret the information. A postural screening is a non-diagnostic exam, which does not include any treatment. (9/18/97)

### **SPUTUM ALCOHOL TESTING**

Chiropractors may perform sputum alcohol testing. (5/15/97)

### **STRESS TESTS**

Stress tests (e.g. Koningsberg) are within the scope of chiropractic practice. (11/21/91)

### **TMJ (TEMPOROMANDIBULAR JOINT)**

Chiropractors may treat TMJ. (12/14/95)

### **TRIGGER POINT INJECTIONS (MYOFASCIAL)**

Are Oregon licensees who have completed the postgraduate certification in minor surgery able to perform myofascial trigger point injections?

The Board determined that injection of myofascial trigger points is a therapy, and as such is not within the Oregon chiropractic scope of practice. In addition, the injection is more than “superficial” and thus is not covered by the minor surgery provisions. (12/11/02)

### **ULTRASOUND**

Therapeutic ultrasound is within the scope of chiropractic practice. (8/19/93)

### **URINALYSIS**

Urinalysis is allowed within the scope of chiropractic practice. (11/21/91)

## **VENIPUNCTURE**

Chiropractors are allowed to draw blood (venipuncture) for diagnostic testing purposes. This diagnostic testing procedure is taught in approved chiropractic colleges all over the United States. (10/24/96)

ORS 684.010(2)(b) defines “Chiropractic” as “The chiropractic diagnosis, treatment and prevention of body dysfunction; correction, maintenance of the structural and functional integrity of the neuromusculoskeletal system and the effects thereof or interferences therewith by the utilization of all recognized and accepted chiropractic diagnostic procedures and the employment of all rational therapeutic measures as taught in approved chiropractic colleges.”

ORS 684.025(2) states: “Nothing in this section or ORS 684.010 shall be interpreted as authorizing the administration of any substance by the penetration of the skin or mucous membrane of the human body for a therapeutic purpose.”

Further legal advice from the Oregon Attorney General confirms that “Chiropractic physicians are accordingly authorized by law to withdraw blood or other fluid samples for diagnostic purposes in connection with the practice of chiropractic.” (9/9/70)

## **SUBSTANCES**

### **ALOE VERA GEL (FOR ORAL CONSUMPTION AND/OR TOPICAL USE)**

Chiropractors may recommend aloe vera gel. (1/21/93)

### **AQUA-SOOTHE**

This product is within the scope of practice, but the Board does have concerns about proper billing. (1/21/93)

### **BOTANICALS**

Non-prescription botanicals are within the scope of chiropractic practice. (5/18/95)

### **CLINICAL NUTRITION**

Applied clinical nutrition is within the scope of practice. See ORS 684.010. (4/21/94; 9/18/97)

### **COLLOIDAL SILVER**

Licensed chiropractors may create their own colloidal silver and sell it to their patients; otherwise, chiropractors may not mix their own homeopathic dilutions. (3/19/98)

### **ETHYL CHLORIDE**

This product may not be used or purchased by chiropractors in Oregon. (7/16/92)

### **FLUORIMETHANE**

Fluorimethane is not in the Physicians Desk Reference (PDR); however, according to the Oregon Board of Pharmacy it is a prescription legend drug. This product may be used as a topical anesthetic in minor surgery **ONLY**, within the chiropractic profession in Oregon. (7/16/92)

### **FORMULA 303**

Chiropractors may recommend Formula 303 to patients, because it is an herbal. (8/20/92)

### **INTRADERMALS**

Intradermals for allergy testing are within the scope of practice. (5/19/94)

## **LIDOCAINE AND SALICYLATES**

Salicylates and lidocaine in phono- or iontophoresis (a procedure where a D.C. uses topical substances w/ultrasound or low volt galvanic current) are within the scope of chiropractic practice. (4/11/96)

## **LIDOCAINE INJECTIONS**

This may be used in minor surgery only.

## **MATOL AND FIBER SONIC (FIBER SUPPLEMENT)**

This supplement is OK to recommend. (1/21/93)

## **MYOCIDE**

The use of myocide is within the scope of chiropractic practice (OTC).

## **ORIENTAL HERBS**

The use of herbs is allowed within the scope of practice in Oregon. (5/19/94)

## **OVER-THE-COUNTER NON-PRESCRIPTION DRUGS**

“Over-the-counter substances” means the same thing as “nonprescription drugs.” The Board has adopted the Board of Pharmacy’s definition of nonprescription (over-the-counter) drugs which is:

ORS 689.005(22) “Nonprescription drugs” means drugs which may be sold without a prescription and which are prepackaged for use by the consumer and labeled in accordance with requirements of the statutes and regulations of this state and the Federal Government. (9/18/97)

## **OVER-THE-COUNTER SUBSTANCES, DOSAGES**

In response to a question regarding whether the statutes or rules allow chiropractors to prescribe or recommend over-the-counter substances in higher doses to achieve a more therapeutic or beneficial dosage, the Board’s response is: Chiropractors must follow the statute. The statute is based on substances, not dosages. Chiropractors must use their best clinical judgment.

(1/18/96; 7/9/98)

## **OXYGEN (NOT allowed for therapeutic purposes)**

Medical oxygen is outside the chiropractic scope of practice, and chiropractic physicians may not prescribe oxygen for therapeutic purposes. (4/27/00) **3/16/06**

## **OXYGEN CONCENTRATION**

The Oregon Board of Pharmacy considers USP (medical) Oxygen (100%) a prescription drug. However oxygen concentrated at a lower percentage (90 to 95%) does not require a prescription. With that understanding, the OBCE does not prohibit oxygen concentration or the devices which produce this by chiropractic physicians. However, it would be inaccurate for anyone to represent that the Board has “approved” the use of oxygen concentration. Similar precautions as indicated for emergency medical oxygen must be observed. (11/20/2008)

## **OXYGEN USE IN EMERGENCIES**

Chiropractic physicians and Certified Chiropractic Assistants may provide emergency first aid, including administering emergency oxygen. A person may not administer emergency oxygen unless the person has received training in the administration of oxygen. *The OBCE is beginning the rulemaking process to establish training requirements.* (HB 2242, 2007)

Chiropractic physicians may obtain oxygen units on an over-the-counter non-prescription basis provided a few basic requirements are met. Use of portable oxygen units for clinic emergencies is currently taught at Western

States Chiropractic College. Access to emergency oxygen could be useful in the event of a cardiac arrest or other incident in which a patient may stop or have difficulty breathing. These OTC oxygen units are readily available over the Web from a variety of distributors.

According to the FDA, any oxygen inhaled by a human or animal is considered a drug as per section 201(g)(1) of the Federal Food, Drug, and Cosmetic Act (the Act), and is required to be dispensed by prescription. However, the agency allows medical oxygen to be dispensed without a prescription to properly trained individuals for oxygen deficiency and resuscitation, as long as the following conditions are met:

- 1) A high-pressure cylinder filled with medical oxygen and used for oxygen deficiency and resuscitation must have the following statement present on the drug label: "For emergency use only when administered by properly trained personnel for oxygen deficiency and resuscitation. For all other medical applications, Rx Only."
- 2) The equipment intended for such use must deliver a minimum flow rate of 6 liters of oxygen per minute for a minimum of 15 minutes, and include a content gauge and an appropriate mask or administration device, and
- 3) Proper training is documentation that an individual has received training within the past twenty-four months or other appropriate interval, in the use of emergency oxygen including providing oxygen to both breathing and non-breathing patients, and safe use and handing of emergency oxygen equipment. Training may be obtained from any nationally recognized professional organization, such as the National Safety Council, the American Heart Association, the American Red Cross, etc. Under no circumstances can emergency oxygen be used to fill high-pressure cylinders or be used in a mixture or blend.

Once all of these conditions are met, an individual may have access to medical oxygen without a prescription. (11/16/06)

### **SALICYLATES AND LIDOCAINE**

See LIDOCAINE AND SALICYLATES

### **VITACEL**

Vitacel is not considered a nutritional supplement because the main carrier is a drug. (9/16/93)

### **VITAMIN C WITH ECHINACEA**

This supplement is acceptable for chiropractors to recommend. (1/21/93)

### **VITAMINS WITH BOTANICALS**

These supplements are acceptable for chiropractors to recommend. (1/21/93)

## **SECTION II**

# **Practice Policies Regarding Chiropractors, Applicants, and Certified Chiropractic Assistants**

## CHIROPRACTORS

### ABANDONMENT

The Board determined that a licensee is not abandoning a patient in the case when the patient's insurance coverage reaches its limit, and the patient does not have private insurance nor can the patient afford to pay for further services. "...this is not abandonment (since) the patient is being given choices per the doctor's office policy. The decision is the patient's to continue care in that office or elsewhere with a policy that might better fit their need." (05/15/02)

### ADVERTISING REVIEW POLICY: (UPDATED APRIL 27, 2010)

The OBCE does not review or pre-approve advertising by chiropractic physicians. Instead the Board is issuing this advisory:

Chiropractic physicians or any other person under the jurisdiction of the OBCE must be able to support statements, whatever the statements are, with credible evidence. This is necessary to be in compliance with:

ORAR 811-015-0045 (1) (a): "A Chiropractic physician shall not use or participate in the use of improper advertising which: States any fact which would result in the communication being untruthful, misleading or deceptive. (b) Contains statistical or other assertions of predicted rates of success of treatment..." (also provisions 2 through 4)

ORS 684.100 Grounds for discipline. Section (1)(i): "The use of any advertising making untruthful, improper, misleading or deceptive statements. (j) The advertising of techniques or modalities to infer or imply superiority of treatment or diagnosis by the use thereof that cannot be conclusively proven to the satisfaction of the board.

The OBCE may not impinge upon legitimate commercial free speech rights. However, advertising statements must be supported by credible evidence. The OBCE recommends that this evidence be available for review upon request.

Doctors should review their own advertising in light of OAR 811-015-0045 and this policy. The Board will make a final determination of the credibility of evidence supporting advertising statements on a case by case basis when presented with a complaint concerning advertising.

To assist in understanding what the OBCE considers to be violations of the advertising rule, final orders or excerpts regarding advertising violations will be provided upon request. (9/22/98)

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The Oregon Board of Chiropractic Examiners adopted five additional policy statements regarding advertising by chiropractic physicians at their May 17, 2007 meeting. These policies are an update to the existing OBCE policy advisory on advertising issues.

- 1) Any advertising claims that spinal decompression/traction devices or any other medical device are a "medical breakthrough" must be supported by credible evidence.
- 2) Claims of superiority for medical devices such as "Non-surgical spinal decompression is the most promising disc pain treatment today" must meet the standard articulated in ORS 684.100 Section (1) (k): "The advertising of techniques or modalities to infer or imply superiority of treatment or diagnosis by the use thereof that cannot be conclusively proven to the satisfaction of the board.
- 3) Statements contrasting spinal decompression favorably with drugs or surgery without mentioning other kinds of chiropractic treatment are misleading to the public.

- 4) Use of the term “FDA approved” in reference to the FDA 510 (k) clearance process is misbranding and misleading advertising. The FDA’s regulations make clear that “*Submission of a premarket notification in accordance with this subpart, and a subsequent determination by the Commissioner that the device intended for introduction into commercial distribution is substantially equivalent to a device in commercial distribution before May 28, 1976, or is substantially equivalent to a device introduced into commercial distribution after May 28, 1976, that has subsequently been reclassified into class I or II, does not in any way denote official approval of the device. Any representation that creates an impression of official approval of a device because of complying with the premarket notification regulations is misleading and constitutes misbranding.*”
  - 5) When a statement is literally false, the (OBCE) presumes that it will cause injury to a competitor. (Cf. Energy Four, Inc. v. Dornier Medical Sys., Inc., 765 F. Supp. 724, 734 (N.D. Ga. 1991))
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### **Advertising**

**OAR 811-015-0045** (1) A Chiropractic physician shall not use or participate in the use of improper advertising. Improper advertising is any advertising which:

- (a) States any fact which would result in the communication being untruthful, misleading or deceptive;
  - (b) Contains statistical or other assertions of predicted rates of success of treatment; or
  - (c) Claims a specialty, degree or diplomate not possessed or that does not exist;
- (2) A chiropractor shall not practice under a name that is misleading as to the identity of the chiropractor or chiropractors practicing under such name or under a firm name which is misleading.
- (3) A Chiropractic physician shall adhere to the Doctors' Title Act, ORS 676.110(2).
- (4) A Chiropractic physician may use a professional card and/or letterhead identifying the Chiropractic physician's name, profession, address, telephone number, name of the chiropractic office and educational degrees. It may also include names of licensed associates.

**ORS 684.100 Grounds for discipline of licensee or refusal to license; restoration; suspension; competency examinations; confidential information.** (1) The State Board of Chiropractic Examiners may refuse to grant a license to any applicant or may discipline a person upon any of the following grounds:

- (a) Fraud or misrepresentation.
  - (b) The practice of chiropractic under a false or assumed name.
  - (c) The impersonation of another practitioner of like or different name.
  - (i) The use of any advertising making untruthful, improper, misleading or deceptive statements.
  - (j) The advertising of techniques or modalities to infer or imply superiority of treatment or diagnosis by the use thereof that cannot be conclusively proven to the satisfaction of the board.
- (L) Advertising either in the name of the person or under the name of another person, clinic, or concern, actual or pretended, in any newspaper, pamphlet, circular or other written or printed paper or document, professing superiority to or a greater skill than that possessed by other chiropractic physicians that cannot be conclusively proven to the satisfaction of the board.
- (o) The advertising or holding oneself out to treat diseases or other abnormal conditions of the human body by any secret formula, method, treatment or procedure.
- (04/27/10)

### **ANCILLARY SERVICES**

A clarification of OAR 811-010-0130 Other Health Professionals.

If the licensed “ancillary” person is offsite (i.e. Radiologist, LMT, PT, etc.), may the chiropractor contract with them to provide services to the patients outside of the chiropractic clinic? The Board determined if an established relationship with the provider as either an independent contractor or employee exists, you may refer the patient out. (11/16/06)

### **ANIMALS, TREATMENT OF**

Chiropractic physicians are permitted to treat animals provided they have a written referral from a licensed veterinarian. The care rendered as a result of the referral must be in writing and in accordance with the

standards of practice outlined in ORS 686; and only as prescribed and diagnosed by the veterinarian. (10/4/97)

### **ATHLETIC TRAINERS, SUPERVISION**

Chiropractors may supervise athletic trainers. (11/16/95)

### **BIRTH CERTIFICATES**

ORS 432.206 (3) states that the attending physicians shall prepare and file the birth certificate within five days of the birth. ORS 432.005 defines “physician” as including DCs so the signing of birth certificates is within a chiropractic physician’s scope of practice.

### **CHIROPRACTORS AND OTHER HEALTH LICENSES**

The Board considered a series of questions concerning Chiropractors hiring and/or working with other health professional licensees. The specific example dealt with the relationship between Chiropractors and Licensed Massage Technicians.

As long as the licensee is working within the scope of the licensee’s practice and is regulated by the licensee’s own licensing Board, the licensee does not need to have a chiropractor present when working on the chiropractor’s patient. The licensee is responsible for implementing and utilizing clinical judgment within the licensee’s own scope of practice.

The Board of Nursing has specific administrative rules allowing Licensed Practical Nurses and Registered Nurses “to accept and implement orders for client care from licensed health care professionals who are authorized to independently diagnose and treat.” Nurses are charged with the authority and responsibility to question any order which is not clear, perceived as unsafe, contraindicated for the client, or not within the health care professional’s scope of practice.

Nurses must have knowledge of the professional’s scope of practice. Please review OAR Chapter 851 Division 45 for more specific information regarding nursing scope of practice.

If the person is acting in the capacity of a Chiropractic Assistant or Ancillary Personnel, OAR 811-010-0110 will apply, and the chiropractor must be present when required.

The OBCE recommends that you thoroughly review the scope of practice for all personnel with whom you are working and/or choose to hire. (3/20/97)

### **CLINICAL JUSTIFICATION RULE POLICY**

The following policy declarations further describe and explain the intent of OAR 811-015-0010(4).

The requirement in OAR 811-015-0010 (4) for evidence based outcomes management for “curative chiropractic treatment” does not include maintenance or wellness care. OCPUG defines maintenance care as inclusive of both preventive care and supportive care. While preventive may be considered similar to wellness care, supportive care “is appropriate for a patient who has reached maximum therapeutic benefit” and/or “is appropriate in patients who display persistent and/or recurrent signs of illness or impairment.”

Nothing in OAR 811-015-0010 should be interpreted as requiring or implementing a “very restrictive cook book approach.”

The term “evidence based” as it relates to outcomes measures is not a specific reference to the Educational Manual (EMEBC) or to “evidence-based medicine,” nor “evidence based best practice.”

There should be clinical literature and evidence supporting the outcome assessments utilized. "Evidence" means the whole body of professional knowledge. This includes the spectrum of evidence from randomized, controlled clinical trials to less rigorous forms of evidence. Examples of less rigorous forms of evidence includes one or more well designed controlled observational clinical studies, clinically relevant basic science studies, descriptive studies, case reports, or expert opinions published in refereed journals. Where such evidence is lacking professional field consensus is considered.

Lastly, the Board understands that some practitioners employ investigational or other varied (or non-traditional) chiropractic approaches addressing certain types of curative chiropractic care. It is not the Board's intent to discourage these approaches with the evidence based outcomes measures language of Section (4). Should an issue or complaint arise concerning treatment of this general type, the Board will first look to Section (1) language which states, "Clinical rationale, within accepted standards and understood by a group of peers, must be shown for all opinions, diagnostic and therapeutic procedures." (5/18/06)

### **COMPUTERIZED SOAP NOTES**

Computerized SOAP notes are acceptable as long as they are used in conjunction with the Oregon Practices & Utilization Guidelines. (4/16/92)

### **CONTINUING EDUCATION**

#### **Additional & Specific CE Requirement**

On July 21, 2011 and effective January 1, 2012 the Board determined to create mandatory CE. The requirements were established in consideration of the volume of complaints related to boundary violations and record keeping/charting.

Effective January 1, 2012 and throughout the 2012 year, licensees must complete two (2) hours in boundaries. In 2013, licensees must complete two (2) hours in charting and recordkeeping.

Every year thereafter, licensees must alternate 2 hours boundaries and 2 hours charting/record keeping.

The hours may be a part of the licensee's annual CE requirement - 2 of 20 for regular active status; 2 of 6 for senior active; and first year licensees are exempt.

The board determined that there are an adequate number of boundary courses available which will meet its training expectations. However, they determined that they must establish the specific requirements of the charting and recordkeeping courses.

The proofs of completion of the hours (and only these mandatory hours) must be submitted immediately upon completion to the Board (This is contrary to the normal affidavit reporting; do NOT submit proof of all education at that time.)

The Board did not set an end date for the requirement. (7/21/11)

#### **Approval of Courses or Activities "not specifically listed" in the OAR**

Regarding Continuing Education issues that fall under OAR 811-015-0025(9)(L) "and any other course or activity specifically authorized by the OBCE."

Continuing education requests are submitted to the administrative office for possible approval "by the Board" per OAR 811-015-0025(9)(L). If the criteria of the course or activity is, in large part, similar to other described criteria in this rule (sections 8 and 9), but the activity or course is not specifically listed, the Executive Director is delegated authority by the Board to approve the course or activity.

Other courses or activities that do not, "in large part," compare to given criteria of this rule are to be presented to the board for its approval at the next regularly scheduled board meeting.

The term "in large part" may refer to courses or activities which are related to:

- Other institutions not specifically listed, but not excluded intentionally
- Other health-related "studies," but not necessarily "research"
- Teaching "chiropractic" courses at other institutions (hospitals, gyms, nursing homes, etc.), and
- Teaching "chiropractic" courses not necessarily as continuing education

(02/20/03)

### **Board Member CE Allowance**

A CE allowance for board members falls within the requirement of the CE rule. Members are improving and increasing their knowledge and proficiency in chiropractic practice by study and review of cases and policy issues. In addition it is already standard for OBCE subcommittees to receive CE credit for their services, so it would not be out of line for board members to receive credit.

Board members agreed that a maximum of eight hours CE will be allowed annually any of the following - board member participation at regular bi-monthly meetings, subcommittee meetings, national conferences, or other board member represented event. (1/22/09)

### **Credit Taken 13 Months Prior to Renewal**

If CE hours were taken 13 months preceding the current licensing renewal period, and the hours were submitted but NOT used toward last year's renewal, they may be used for the current license renewal period. (8/27/96)

### **Educational Manual for Evidenced Based Chiropractic Chapters**

The OBCE approved 2 hours CE credit for the complete reading of each chapter of the Educational Manual for Evidence-Based Chiropractic. (9/21/06)

### **National Board of Chiropractic Examiners (NBCE) PACE approved programs**

The OBCE accepts all continuing education courses approved by the Federation of Chiropractic Licensing Board's PACE (Providers of Approved Continuing Education) program. The OBCE also accepts all continuing education courses or activities that meet the criteria and requirements of OAR 811-015-0025. (11/18/04)

### **National Board of Chiropractic Examiners Part IV Exam Assistants**

The Board considered the number of hours possible to contribute to the Part IV process and determined that the exam assistants will be allowed up to 19.5 hours continuing education credit. The OBCE will determine the means to establish how many credit hours should be approved per exam. (9/21/00)

### **Practice Guidelines Committees (including Steering Committee, Nominal Panel and Seed Panels)**

Given the amount of time contributed by the various committees involved in the practice guidelines development, the Board approved continuing education credit as follows:

- Steering Committee members may receive a maximum of 10 hours credit
- Nominal Panel and Seed Panel members may receive a maximum of 20 hours credit with a stipulation that no more than three (3) meetings may be missed in one renewal period. If three or more meetings are missed, a Nominal Panel member will NOT receive ANY credit for their service and the member will be replaced.
- Licensees performing literature searches may receive a maximum of 20 hours credit as well. The Steering Committee minutes will reflect who is performing a literature search. (9/21/00)

### **Teaching at a Health-Care Institution or Teaching Post-Graduate Education**

The purpose of this policy is to clarify the continuing education allowance in OAR 811-015-0025 (h) teaching courses at an accredited health care institution; and (i) teaching chiropractic continuing education courses. The Board has determined that a licensee may report a maximum eight (8) credit hours per year for teaching, if he or she is the person who develops the course outline, researches the course material and then teaches the class.

Because of this determination, the administrative rule citation 811-015-0025(9)(h) "teaching courses at an accredited health care institution" does not include teaching aides, clinic or class assistants, etc.

In relation to both 811-015-0025(9)(h) "teaching courses at an accredited health care institution" and (i) "teaching chiropractic continuing education courses"; a licensee may receive credit hours for the actual time teaching the class, not for the research and development of the program.

(5/19/05; Eff. 8/1/05)

### **COUNSELING PATIENTS**

A Chiropractor may only counsel within the area of chiropractic. Example: Counseling regarding sleep habits, eating habits, exercise, stress levels as it affects the musculoskeletal system. (3/17/93)

Chiropractors must stay within the guidelines as taught in chiropractic colleges. Counseling should relate to diagnosis and treatment. (1/21/93)

### **DEATH CERTIFICATES**

According to the Office of Vital Records, a DC can sign a death certificate. ORS 432.307, states, "physicians" sign death certificates. In ORS 432.005, the definition of "physician" includes DCs; so yes they can sign a death certificate.

### **DIABETIC EDUCATION**

An Oregon chiropractic physician may provide diabetic education within chiropractic care. This education may include lifestyle counseling, nutritional support, and diagnostic testing for blood sugar levels. (03/06/02)

### **DIPLOMATE STATUS**

Chiropractors in Oregon may claim a diplomate status if, in fact, they have earned that credential, otherwise they would be in violation of the Board's advertising rule. (10/25/00)

### **DMV'S MEDICALLY AT-RISK DRIVER PROGRAM**

The Oregon Department of Motor Vehicles (DMV) requires medical doctors and other health care providers (such as chiropractic, naturopathic doctors, physical therapists etc.) to report drivers with severe and uncontrollable functional or cognitive impairments that impact their ability to safely operate a motor vehicle. This could result in suspension of driving privileges.

*Chiropractic physicians are required to contact DMV to report a severe and uncontrollable impairment only if they are a patient's primary care provider. Otherwise, the chiropractic physician must submit a report to the patient's medical doctor or other primary care provider who then will determine whether to report. A chiropractic physician may still report to DMV on a voluntary basis, if needed.*

In the rare case where this may be an issue, a chiropractic physician should review the actual administrative rules, detailed information, and reporting forms found on the DMV's Web page which can be found at [www.oregon.gov/ODOT/DMV/ATRISK/](http://www.oregon.gov/ODOT/DMV/ATRISK/)

Severe and uncontrollable impairments are defined as:

- Severe means the impairment substantially limits a person’s ability to perform many daily activities, including driving.
- Uncontrollable means that the impairment cannot be corrected or compensated for by surgery, medication, therapy or adaptive devices.

Once someone is reported to DMV, the driver may receive a Notice of Suspension in the mail informing the driver his/her license will be suspended 5 days from the date on the notice. At that point, the driver has several options. The driver can contact DMV and:

- Request the opportunity to demonstrate that he/she can still safely drive. Based on the information contained in the medical referral, the driver may also be required to provide DMV with additional medical information. The person will have to take the vision, knowledge and drive tests. The driver’s license will be reinstated upon passing the required tests.
- Request an administrative hearing to appeal DMV’s decision to suspend their driving privileges.
- Voluntarily give up their driving privileges by turning in their driver’s license.

For additional information, call the DMV Medical Program Coordinator in Salem at (503) 945-5295. (11/18/04)

**DOCTORS' TITLE ACT, ORS 676 (2011)**

**676.110 Use of Title Doctor** (1) An individual practicing a health care profession may not use the title “doctor” in connection with the profession, unless the individual:

- (a) Has earned a doctoral degree in the individual’s field of practice; and
- (b)(A) Is licensed by a health professional regulatory board as defined in ORS 676.160 to practice the particular health care profession in which the individual’s doctoral degree was earned; or
- (B) Is working under a board-approved residency contract and is practicing under the license of a supervisor who is licensed by a health professional regulatory board as defined in ORS 676.160 to practice the particular health care profession in which the individual’s doctoral degree was earned.

(2) If an individual uses the title “doctor” in connection with a health care profession at any time, the individual must designate the health care profession in which the individual’s doctoral degree was earned on all written or printed matter, advertising, billboards, signs or professional notices used in connection with the health care profession, regardless of whether the individual’s name or the title “doctor” appears on the written or printed matter, advertising, billboard, sign or professional notice. The designation must be in letters or print at least one-fourth the size of the largest letters used on the written or printed matter, advertising, billboard, sign or professional notice, and in material, color, type or illumination to give display and legibility of at least one-fourth that of the largest letters used on the written or printed matter, advertising, billboard, sign or professional notice.

- (3) Subsection (1) of this section does not prohibit:
  - (a) A chiropractic physician licensed under ORS chapter 684 from using the title “chiropractic physician”;
  - (b) A naturopathic physician licensed under ORS chapter 685 from using the title “naturopathic physician”;
  - (c) A person licensed to practice optometry under ORS chapter 683 from using the title “doctor of optometry” or “optometric physician”; or Enrolled House Bill 2395 (HB 2395-A)
  - (d) A podiatric physician licensed under ORS 677.805 to 677.840 from using the title “podiatric physician.”

**676.120 Use of deceased licensee’s name.** Notwithstanding ORS 676.110, upon the death of any person duly licensed by a health professional regulatory board as defined in ORS 676.160, the executors of the estate or the heirs, assigns, associates or partners may retain the use of the decedent’s name, where it appears other than as a part of an assumed name, for no more than one year after the death of such person or until the estate is settled, whichever is sooner.

**676.130 Enforcement of ORS 676.110 and 676.120.** Each health professional regulatory board as defined in ORS 676.160 shall notify the appropriate district attorney of any violation of ORS 676.110 and 676.120

which may be brought to the attention of such board. The district attorney of the county in which any violation of those sections takes place shall prosecute the violation upon being informed of the violation by any person or by one of such boards.

### **EMERGENCY FIRST AID**

Chiropractic physicians and Certified Chiropractic Assistants may provide emergency first aid. The following language was adopted into 684.025 new subsection (4):

*(a) "This chapter does not prevent a person licensed under ORS 684.054 from providing emergency first aid, including administering emergency oxygen.*

*(b) A person may not administer emergency oxygen unless the person has received training in the administration of oxygen. The State Board of Chiropractic Examiners shall adopt rules that establish training requirements.*

*(c) As used in this subsection, 'emergency oxygen' means oxygen delivered at a minimum flow rate for a specified period of time as determined and regulated by the United States Food and Drug Administration." (HB 2242, 2007)*

### **FAMILY/RELATIVES, TREATMENT OF**

Oregon chiropractors may treat family members and employees. However, chart notes and files must be kept as with any other patient.

OAR 811-010-0005 defines "patient" as "any person who is examined, treated, or otherwise provided chiropractic services whether or not the person has entered into a physician/patient relationship or has agreed to pay a fee for services."

### **FEE SPLITTING AND COMMISSIONS**

#### **ABS Health Center, Inc Marketing Plan**

The Oregon Board of Chiropractic Examiners advises that a chiropractic physician who participates in a marketing plan recently offered by ABS Health Center, Inc. based in Cincinnati, Ohio would be in violation of Administrative Rule 811-035-0015, prohibition on fee-splitting in the referral of patients for services.

ABS Health Center, Inc. attempted to enlist an Oregon chiropractic physician whereby they proposed to "...bill back a marketing fee of \$1,000 for every \$3,500 cash patient closed (29% if the amount collected is less than \$3,500)" in return for an agreement whereby ABS leases a spinal decompression device for the doctor's office and conducts direct mail & broadcast media to recruit patients to use this device.

Any Oregon chiropractic physician who agreed to this would be in violation of the Oregon Board of Chiropractic Examiner's Administrative Rule 811-035-0015 which states,

"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:...

(24) Splitting fees or giving or receiving a commission in the referral of patients for services."

In a letter to ABS, Executive Director Dave McTeague also said, "We note that you have attempted to draw a distinction between Insurance/Medicare/Medicaid and cash pay patients, stating that fee splitting is OK if it involves cash pay patients. This letter is to inform you that the Oregon Board of Chiropractic Examiner's administrative rule does not make this distinction and that fee splitting for chiropractic patients of the magnitude proposed is illegal in Oregon." (5/18/06)

### **Adjustments or Other Minor Gifts for Patient Referrals**

The practice of extending a free adjustment or other minor gift to patients referring a new patient for services is not a violation of the Board's administrative rule, unless in the Board's opinion the practice grows to be deceptive, unethical, deleterious or harmful to the public.

OAR 811-035-0015 states: "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: ....(24) *splitting fees or giving or receiving a commission* in the referral of patients for services. (emphasis added).

### **Commissions and Fees**

Webster's Ninth New Collegiate Dictionary's definition of "commission," which speaks specifically to money, was considered.

The Board noted that any gratuity between professionals and any business entity for patient referrals is unethical and harmful to the public. Any practitioner offering anything to another practitioner in exchange for a patient referral is subject to possible sanctions for unprofessional conduct.

The Board suggests that chiropractors needing further advice or legal opinion in regard to this policy, should contact their own attorney. (3/20/97)

### **Donating to a Non-Profit**

The Board was asked if a non-profit organization (i.e. private school) could advertise to their members (i.e. parents) that if they utilize the services of a particular chiropractic physician, the physician will donate 10% back to the non-profit organization. The Board determined this is not "fee splitting" and does not violate the spirit of OAR 811-035-0015(24). (11/20/03)

### **Leasing Agreements and Professional Referrals**

In May of 2003, the Board reviewed the following question regarding business practices under a multiple discipline clinic setting. The following response from the OBCE is not in anyway legal opinion but only presents information about choices.

For a chiropractic physician who is leasing/renting office space, office personnel/billing services, that also leases/rents to other types of licensed professionals: Do "walk-in" patients requesting chiropractic services constitute a "referral" by the front desk person to that doctor? **No.**

New OBCE policy: In review of this question the Board explored whether a "referral" by a parent company or other health care provider constitutes fee splitting in percentage of gross lease arrangements (or percentage of pay arrangements). The Board received legal advice that it has broad authority to interpret the meaning of the fee splitting rule (OAR 8110-035-0015 (24)).

Therefore the Board has determined that a chiropractor or health professional who enters into percentage of gross leasing arrangement, and who may refer patients or receive referrals from the other party, does not constitute "fee splitting" if the business agreement is entered into prior to any patient base and there is not a true commission or fee paid per patient back to the chiropractor or other health professional. This same logic also holds true for percentage of patient base rate of pay. (5/28/03)

## **HIPAA - IMMINENT DANGER EXCEPTION**

The OBCE recognizes the **Imminent danger exception** as outlined in HIPAA regulations. This policy communicates to chiropractic physicians that they may take appropriate action when faced with an imminent danger situation. See below an example of a recent situation.

A chiropractic physician may, consistent with applicable law and standards of ethical conduct, use or disclose protected health information, if the chiropractic physician in good faith, believes the use or disclosure:

- (i)(A) Is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public; and
  - (B) Is to a person or persons reasonably able to prevent or lessen the threat, including the target of the threat; or
  
- (ii) Is necessary for law enforcement authorities to identify or apprehend an individual:
  - (A) Because of a statement by an individual admitting participation in a violent crime that the covered entity reasonably believes may have caused serious physical harm to the victim; or
  - (B) Where it appears from all the circumstances that the individual has escaped from a correctional institution or from lawful custody, as those terms are defined in Sec. 164.501.

This policy is based on current HIPAA regulations. Any chiropractic physician, who in good faith discloses protected health information under the above mentioned criteria, will not be found to be in violation of any other patient confidentiality laws or rules. (9/20/05)

## **INACTIVE LICENSE**

### **(Changing to active after five or more years)**

The following policy is an expansion of the current Oregon Administrative Rule 811-010-0086(8) which reads, "Inactive licensees who apply for reinstatement after five or more years after the date of transfer to inactive license, or who cannot demonstrate to the satisfaction of the Board they have been in active practice during the preceding five years, may be required to establish their competency in the practice of chiropractic by

- (a) receiving a passing grade on all or part of an examination required by the Board; **Or**
- (b) submitting a letter showing proof of active practice and any disciplinary actions from the state boards where licensure is maintained.

Any licensee who has maintained an inactive license for five or more years will be required to meet one of the following criteria before they may receive an active license in Oregon:

1. Proof that the licensee was actively practicing at least one year of the past five. Proof should include evidence of malpractice insurance, clinic address, and license verification from the state where practicing. *(A thumbprint will be required in the future once a more clear policy is established regarding that requirement.)*  
**Or**
2. Show proof that one of the following exams was successfully passed in the past five years:
  - a) National Board of Chiropractic Examiners' SPEC (Special Purposes Exam for Competency)
  - b) National Board of Chiropractic Examiners' Part IV (practical) Exam
  - c) Another state's licensing exam**Or**
3. Petition the Oregon Board

(DC should explain why it is not necessary to prove competence, or explain the reason(s) why it is not necessary to meet *these* requirements to prove competence.) (11/99)

### **INDEPENDENT MEDICAL EXAMINATION (I.M.E.)**

There is one standard for all chiropractors, whether they be IME, examining, treating, consulting or rehabilitating chiropractors. A professional relationship exists between the patient and the chiropractor, regardless of whether the chiropractor is the examining or treating doctor.

*Regardless of the role, the chiropractor is expected to perform an appropriate chiropractic examination based on the patient's current and past complaints, the manner of onset, and the elicited history. From this the chiropractor will make a diagnosis and determine any further procedures or tests necessary to clarify the diagnosis and/or prognosis. These may include, but not be limited to: diagnostic imaging, laboratory testing, or other specialized studies. If indicated, the evaluating chiropractor will propose any of the following: a recommended course of further care, a timeframe for reevaluation, treatment options or referrals; or discharge from care when appropriate.*

All examinations should include a "functional chiropractic analysis." The Board has always assumed this was inherent in the P & U Guidelines, even though it was not included as specific language. The Board also stated that diagnosis should be based on pertinent history and examination findings, and reflected in the record.

The issues arising out of an OBCE action in 2002 resulted in the following agreement between the OBCE and the respondent chiropractic physician.

a. The doctor/patient relationship between examiner and the examinee is limited to the examination, the opinion, and the review of the patient history and medical records provided; and does not include ongoing treatment monitoring. The examiner shall make important health information, diagnosis and treatment recommendations available to the patient, treating doctor, and patient's legal counselor or guardian via the independent report. Upon receipt of a signed written request from the patient or patient's legal guardian, a copy of the examination report shall be made available as indicated in the request. This could be to the patient and/or any other party designated by the patient.

b. An independent chiropractic examiner should review the dictated medical opinion of a fellow panel member of an independent or insurer examination for its accuracy and completeness, and when necessary to clarify biomechanical or chiropractic reasoning, the independent chiropractor examiner should supplement the dictated medical opinion with his or her independent chiropractic opinion.

Administrative Rule 811-015-0010 (Clinical Justification) also governs the conduct of independent examinations.

**Workers' Compensation IMEs.** The Oregon Workers Compensation Department (OWCD) is required to maintain a list of providers authorized to perform independent medical evaluations (IMEs) for workers' compensation claims as a result of SB 311 (2005). The OWCD director may remove a provider from the list after a finding of violation of standards of professional conduct for workers comp IME claims. Health professional licensing boards may adopt such standards or if they don't the default standards are published by the American Board of Independent Medical Examiners (ABIME). The OBCE considered this issue at their May 18, 2006 meeting and decided to accept the ABIME standards (below) and also submit to OWCD the OBCE's policy as additional applicable standards for IMEs performed by chiropractic physicians.

**ABIME Guidelines of Conduct:** Physicians should:

1. Be honest in all communications
2. Respect the rights of the examinees and other participants, and treat these individuals with dignity and respect;
3. At the medical examination:
  - Introduce himself/herself to the examinee as the examining physician;

- Advise the examinee they are seeing him/her for an independent medical examination, and the information provided will be used in the assessment and presented in a report;
  - Provide the examinee with the name of the party requesting the examination, if requested;
  - Advise the examinee that no treating physician-patient relationship will be established;
  - Explain the examination procedure;
  - Provide adequate draping and privacy if the examinee needs to remove clothing for the examination;
  - Refrain from derogatory comments; and
  - Close the examination by telling the examinee that the examination is over and ask if there is further information the examinee would like to add.
4. Reach conclusions that are based on facts and sound medical knowledge and for which the examiner has adequate qualifications to address;
  5. Be prepared to address conflict in a professional and constructive manner;
  6. Never accept a fee for services which are dependent upon writing a report favorable to the referral service; and
  7. Maintain confidentiality consistent with the applicable legal jurisdiction.
- (7/18/06)

### **LYME DISEASE**

After review of the ETSDP Committee discussion notes, the OBCE adopted this statement at their November 2010 meeting:

*In the treatment of patients with Lyme disease, it is standard of care for chiropractic physicians to participate adjunctively in the co-management with other appropriate health care providers having prescription writing privileges.*

The November 2010 Board minutes and the ETSDP (Examinations, Tests, Substances, Devices and Procedures) Committee discussion notes can be found on the OBCE's web site [www.oregon.gov/obce](http://www.oregon.gov/obce). (Nov 2010)

### **MESSAGE THERAPIST, SCOPE OF PRACTICE**

The Board of Massage Technicians determined on January 9, 1992, that it is the intent of licensed massage technicians to stretch soft tissues which must include the movement of the bony joints through the normal range of motion.

Adjustments and manipulations are not identified as being within the scope of practice of massage therapists since the Board understands the intent of those two activities to be toward the joint surfaces and beyond the normal range of motion rather than the surrounding soft tissues. Although the Board realizes spontaneous manipulation of the joints may occur while doing massage, the intent is directed towards the soft tissues.

### **MINOR SURGERY CERTIFICATION**

The Board decided to accept procedures performed by WSCC's 12th quarter students in a (new) practical minor surgery elective course as part of their fulfillment of the rotation required for certification in Oregon. The course offered is in addition to the 36-hours (24 lecture and 12 lab) normally offered by WSCC. A maximum of 12 minor surgical cases may be acquired, and no more than two students may obtain credit for any one procedure. (11/99)

### **MOTOR CARRIER PHYSICALS**

Chiropractors may perform physicals for D.O.T. motor carrier certification.

According to Title 49-Transportation Chapter III-FHA Dept. of Transportation Subchapter B-- Federal Motor Carrier Safety Regulations, chiropractors are included in the definition of "medical examiner."

“Medical examiner means a person who is licensed, certified, and/or registered, in accordance with applicable State laws and regulations, to perform physical examinations. The term includes, but is not limited to, doctors of medicine, doctors of osteopathy, physician assistants, advanced practice nurses, and doctors of chiropractic.”

(Federal Motor Carrier Safety Regulations, sec. 390.5, revised 6/18/98)

## **MULTI-DISCIPLINE CLINICS**

(See Doctors' Title Act) If any person (including a group or combination of individual persons) uses certain terms listed in the statute in any printed or written matter, or in any advertising, signs, or professional notices, then the particular health care profession under which the person is licensed also must be identified in print at least one-fourth as large as the title or name of the professional “person” or entity. The designation of the person’s health care profession also must be displayed in such a way as to be at least one-fourth as “legible” as the title or name.

To further explain, the following examples are given:

If a multidiscipline clinic has a sign out front that says XYZ Rehab Clinic, then each profession involved in the clinic must be identified, such as:

XYZ Rehab Clinic

Medical Doctor, Chiropractor etc. (in one-fourth size print)

If a person’s name is used, then one must be identified as a chiropractor, i.e. John Doe, Chiropractor, or John Doe, Chiropractic Physician.

The provisions of the “Doctor’s Title Act”, ORS 676.100 - 676.130 apply in the case of multidisciplinary organizations such as rehabilitation facilities in which various health-care professionals practice.

The Doctors' Title Act is essentially a consumer protection statute. If any person (including a group or combination of individual persons) uses certain terms listed in the statute in any printed or written matter, or in any advertising, signs, or professional notices, then the particular health care profession under which the person is licensed also must be identified in print at least one-fourth as large as the title or name of the professional “person” or business entity. The designation of the person’s health care profession also must be displayed in such a name. The concept is to provide consumers with sufficient information to identify under which license a health care professional in Oregon is practicing.

The purpose and effect of the statute do not differ if the “person” is an individual physician or a multidisciplinary organization. A plain reading of the statutory terms demands that each health care professional working in a multidisciplinary clinic, institute, or group must identify his or her profession according to the “one-fourth” rule. (11/3/92); (11/7/11)

~~(See Doctors' Title Act) If any person (including a group or combination of individual persons) uses the term “doctor” in any printed or written matter, or in any advertising, signs, or professional notices, then the particular health care profession under which the person is licensed also must be identified in print at least one-fourth as large as the title or name of the professional “person” or entity. The designation of the person’s health care profession also must be displayed in such a way as to be at least one-fourth as “legible” as the title or name. The concept is to provide consumers with sufficient information to identify under which license a health care professional in Oregon is practicing.~~

~~The provisions of the “Doctor’s Title Act”, ORS 676.110–676.130 apply in the case of multidisciplinary organizations such as rehabilitation facilities in which various health-care professionals practice.~~

~~The Doctors' Title Act is essentially a consumer protection statute. If any person (including a group or combination of individual persons) uses certain terms listed in the statute in any printed or written matter, or in any advertising, signs, or professional notices, then the particular health care profession under which the person is licensed also must be identified in print at least one-fourth as large as the title or name of the professional "person" or business entity. The designation of the person's health care profession also must be displayed in such a name. The concept is to provide consumers with sufficient information to identify under which license a health care professional in Oregon is practicing.~~

~~The purpose and effect of the statute do not differ if the "person" is an individual physician or a multidisciplinary organization. To the contrary, the statute specifically defines person as including any "clinic," "institute," "specialist," or any group or combination of persons. Thus, a plain reading of the statutory terms demands that each health care professional working in a multidisciplinary clinic, institute, or group must identify his or her profession according to the "one-fourth" rule. (11/3/92)~~

~~The OBCE does not review or pre-approve advertising by chiropractic physicians. Instead the Board is issuing this advisory.~~

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In May of 2003, the Board reviewed the following questions regarding business practices under a multiple discipline clinic setting. The following responses from the OBCE are not in anyway legal opinions but only presents information about choices.

### **Employee status**

Can a DC be an employee of a hospital or clinic that is multi disciplinary with no majority interest?

First, you must determine if the employer is "a business entity organized for the purpose of practicing chiropractic." It would be hard to argue that a hospital is organized for this purpose. The OBCE sees no problem from a business organization standpoint for a chiropractor or be employed by a hospital as long as the chiropractic physician is allowed to meet his/her responsibilities as outlined in ORS 684, OAR 811, and the Oregon Chiropractic Practice and Utilization Guidelines. The same logic may hold true for some other employing entity, however it must not be a subterfuge to skirt the requirements of OAR 811-010-0120. See also OAR 811-010-0120 (8) multidisciplinary provisions. (5/28/03)

### **Independent Contractor**

Could an Oregon DC work as an independent contractor in the above illustration?

The legal requirements for independent contractor status are outlined in state and federal law. The OBCE recommends chiropractors seek specific legal advice to determine their appropriate status as an independent contractor or employee. (5/28/03)

Does the OBCE have specific recommendations for clauses in independent contractor contracts?

The OBCE holds all chiropractors to the same standards of practice as outlined in ORS 684, OAR 811, and the Oregon Chiropractic Practice and Utilization Guidelines. The OBCE also recommends review of the OBCE Guide to Policy and Practice Questions. (5/28/03)

### **NETWORK CHIROPRACTIC**

The Oregon Board of Chiropractic Examiners (OBCE) reviewed the conclusions of the advisory committee on E.T.S.D.P.s (examinations, tests, substances, devices and procedures).

The Board determined that Network Chiropractic is standard under Board's present rule. This is solely due to the fact that this technique is taught in a post-graduate continuing education course at Sherman College of Straight Chiropractic. (Oregon Administrative Rule 811-015-0070)

In making this determination, the OBCE offers no opinion as to the clinical efficacy of Network Chiropractic.

However, the OBCE has serious concerns with the utilization recommended for this technique.

The OBCE recommends any Oregon chiropractic physician desiring to utilize Network Chiropractic protocols review OCPUG standards and administrative rules on clinical justification and excessive treatment. (10/15/98, updated May 22, 2003))

## **PARENTAL CONSENT**

When a patient is a child or "minor," the chiropractic physician must have the permission of the parent, custodian or legal guardian before treating the patient. There is no law which specifically defines the type of permission that must be given. Written contracts are enforceable and may be preferred to oral contracts. OAR 811-015-0006 states that the doctor shall preserve a patient's medical records, unless given written permission from the patient. However, a custodial parent or guardian of a minor patient may authorize disclosure to self or others. Disclosure must be made in situations involving court orders. OAR 811-015-0006 implies that only the custodial parent is entitled to information concerning the minor. However, laws governing domestic relations provide that the noncustodial parent shall not be deprived of the authority to consult with any person who provides treatment and that records shall be available to inspect and receive. (Attorney General opinion, July 1995 BackTalk Newsletter)

## **PATIENT-CHIROPRACTOR RELATIONSHIP**

See Independent Medical Exams

## **PATIENT, DEFINITION**

The definition of patient in the Oregon Administrative Rules for Chiropractors will mandate documentation of diagnosis and treatment using standard chiropractic methods.

OAR 811-010-0005(4): "Patient" means any person who is examined, treated, or otherwise provided chiropractic services whether or not the person has entered into a physician/patient relationship or has agreed to pay a fee for services. (Eff. 9/29/92)

## **PATIENT RECORDS**

### **Disclosure of Deceased Patient Records**

The question was asked of the Board, "May the parent of a patient who is deceased gain access to the patient's chiropractic patient record?"

Depending on the estate or probate of the deceased patient, the personal representative should be able to obtain the records. In probate and estate law, the personal representative steps into the shoes of the deceased and carries on with business on behalf of the deceased.

If the chiropractor were to obtain from the personal representative (whether it is a parent or someone else) the probate documents showing they were in fact acting for the deceased and that they requested the records, those records should be releasable to the personal representative.

The parent of a majority-aged patient would not be able to get those records unless they had an authorization, as the confidentiality of those records does not cease with the death of the patient. (04/17/03)

## **Faxed Records Requests**

It is acceptable and legal for a chiropractic physician to accept a faxed copy of a request for patient records; an original signature is not mandatory. (02/20/03)

## **Ownership of patient records**

The Board determined that until the OBCE could rewrite OAR 811-015-0005(1) regarding ownership of the patient records, its interpretation of that rule will be that "including but not limited to" means if the records are present, they must be included in the record. The statement is NOT interpreted to mean that ALL parts listed in section (1) must be (created, and thereby) included. (03/01)

## **Release of patient records**

It is recommended the chiropractic physicians review the provisions of OAR 811-015-0005, OAR 811-015-0006 and ORS 192.518 to ORS 192.524

The OBCE reviewed the intent of OAR 811-015-0005 Records which states:

*"(1) It will be considered unprofessional conduct not to keep complete and accurate records on all patients, including but not limited to case histories, examinations, diagnostic and therapeutic services, treatment plan, instructions in home treatment and supplements, work status information and referral recommendations."*

The OBCE interprets this to mean that IF those parts exist, then they must be considered part of the record. For a more comprehensive understanding of the Board's expectations for patient record keeping, please refer to the entirety of OAR 811-015-0005 and the Oregon Chiropractic Practice and Utilization Guidelines.

Regarding the actual release of records,

*OAR 811-015-0006, Disclosure Of Records (1) A Chiropractic physician shall make available within a reasonable time to a patient or a third party upon the patient's written request, copies or summaries of medical records and originals or copies of the patient's X-rays.*

*(a) The medical records do not necessarily include the personal office notes of the Chiropractic physician or personal communications between a referring and consulting physician relating to the patient*

(Updated 11/18/04)

On September 18, 2008, the OBCE clarified that, *Independent Medical examiners are not required to keep records from other providers.*

On May 19, 2005, the OBCE further reviewed the records release administrative rule and policies. The following is an update to the previous policy.

A prompt response to a valid request for release of patient records from a patient or authorized representative is in the patient's and the public's interest. What is a "reasonable time" may vary depending upon the circumstances of the chiropractic physician and the request. The Board requests the records be released as soon as possible with the expectation that in most cases release would occur within 7 days. Without a valid reason, failure to release records within 30 days of a documented request may be considered to be a violation of OAR 811-015-0006(1) and ORS 684.100 (t).

OAR 811-015-0006 (2) states: "The Chiropractic physician may establish a reasonable charge to the patient for the costs incurred in providing the patient with copies of any portion of the medical records. A patient shall not be denied summaries or copies of his/her medical records or X-rays because of inability to pay or financial indebtedness to the Chiropractic physician."

However, charges for patient records must also comply with ORS 192.521 (below) passed as part of HB 2305 in 2003 and was updated in 2007.

**192.521 Health care provider and state health plan charges.** A health care provider or state health plan that receives an authorization to disclose protected health information may charge:

(1)(a) No more than \$30 for copying 10 or fewer pages of written material, no more than 50 cents per page for pages 11 through 50 and no more than 25 cents for each additional page; and

(b) A bonus charge of \$5 if the request for records is processed and the records are mailed by first class mail to the requester within seven business days after the date of the request;

(2) Postage costs to mail copies of protected health information or an explanation or summary of protected health information, if requested by an individual or a personal representative of the individual; and

(3) Actual costs of preparing an explanation or summary of protected health information, if requested by an individual or a personal representative of the individual. [2003 c.86 §4; 2007 c.812 §1]

(5/19/05, 10/23/08)

### **POST-DOCTORAL DIPLOMATES, USE OF INITIALS**

If a chiropractor has completed a legitimate diplomate course, he/she may use the post-doctoral initials as long as they comply with the OBCE rules on advertising and the Doctor's Title Act.

### **PRIMARY CARE PHYSICIANS**

Chiropractors in Oregon are primary care physicians. (1/19/95,9/18/97)

### **PYRAMID SELLING**

Pyramid schemes are illegal. (ORS Ch. 646.608(1)(r)) Pyramids are illegal because they are inherently fraudulent. In order to achieve the profits that are promised, a never-ending chain of participants must be recruited. At some point a saturation level will be reached and no more recruits will be available. When that occurs, the most recent recruits cannot receive what has been held out to them to cause them to join, and they lose all or a part of what they paid to join the scheme.

Some multi-level sales plans have the potential to run afoul of Oregon's law against pyramid schemes. A paper prepared by the Oregon Attorney General's office "Multi-level Sales Plans in Oregon" which addresses these issues is available by calling the Board office. However, a private attorney should be consulted for specific legal advice.

### **REFLEXOLOGY** (also listed under Chiropractic Assistants)

The board was asked whether an UN-licensed person (either CA or DC) may provide reflexology treatment on chiropractic patients within the Oregon chiropractor's clinic. The OBCE responded that this is unlicensed treatment of the chiropractic patients in the chiropractic clinic.

The inquiring physician is also a naturopath and this may be allowed under his naturopathic license for his *naturopathic* patients. Given this difference in scope, the Board reminded the chiropractor to always remember to chart under *which* license these services are being provided.

In conclusion, *ONLY* a person actively licensed in Oregon as a DC, or Chiropractic Assistant (under the direct onsite supervision of an Oregon licensed chiropractor), may perform reflexology on the chiropractic patients.

(11/20/08)

### **REVOKED CHIROPRACTORS (WHAT THEY MAY AND MAY NOT DO)**

(1) A revoked chiropractor shall not practice chiropractic. They shall not practice or attempt to practice through employees, agents, associates, corporations, partnerships or any other entity.

(2) A revoked chiropractor may not own and/or operate a chiropractic clinic. They must close the clinic and refrain from advertising or distributing any information that would likely cause the public to believe they

are still licensed.

- (3) A revoked chiropractor may sell the clinic business to another licensed chiropractor and/or may become a landlord for the business real estate, leasing or renting the property to another person. A revoked chiropractor must not retain any management authority and may not share in the proceeds of the business other than bonafide contract or rental payments.
- (4) If a revoked chiropractor utilizes any portion of the clinic property for purposes other than practicing chiropractic, they must clearly segregate that portion from any chiropractic activity being conducted by lessors or purchasers. (6/21/91, 9/18/97)

### **SATELLITE OFFICES**

If a chiropractor has two or more offices, they are to hang their original license (wall hanging) in the main office and hang their renewal certificate in a satellite office. A chiropractor may request a duplicate certificate (\$5.00) from the OBCE. (11/29/91)

### **SCHOOL PHYSICALS**

The Oregon Board of Chiropractic Examiners reaffirms that chiropractic physicians are qualified by “clinical training and experience to detect cardiopulmonary diseases and defects.” SB 160, enacted by the 2001 Oregon Legislature, specified that chiropractic physicians may perform school physicals provided they have this training.

Chiropractic physicians have extensive training in diagnosis. This includes the ability to detect cardiopulmonary diseases and defects, as well as a range of other conditions.

Chiropractic professional education covers this subject in physiology, physical diagnosis and cardiorespiratory diagnosis classroom hours as well as internships in student clinic and outpatient clinic experience.

Further, cardiovascular diseases and defects and related diagnosis are tested on four qualifying examinations performed by the National Board of Chiropractic Examiners (NBCE). NBCE Parts I, II, and III are given to chiropractic students as they proceed through college. The NBCE Part IV practical examination is required for licensure in Oregon.

State law requires doctors to use the School Sports Pre-Participation Examination form approved by the Oregon Department of Education. This form also includes suggested exam protocols. It can be obtained from the OR School Athletics Association web page [www.osaa.org/publications](http://www.osaa.org/publications)

Chiropractic physicians are further reminded that performing a school physical examination creates a doctor-patient relationship. The resulting records must be retained by the chiropractic physician for seven years or until the student (patient) is eighteen. These records may be stored off site (such as at the school), as long as the DC has access and confidentiality is maintained. (However HIPAA requirements should be reviewed if this is done.) (07/18/02)

### **STUDENT LOANS, DELINQUENT**

#### **~~Oregon Student Assistance Commission~~**

~~The OBCE has an existing interagency agreement with the Oregon Student Assistance Commission (OSAC) as required by ORS 348.393 and 348.395. This agreement provides that, upon notice of a default in a student loan from the OSAC, the OBCE shall issue a final order taking one of the following proposed actions—not issue/renew a license, suspension or probation. The action can be lifted once the OSAC informs the OBCE that the licensee is no longer in default status. Prior to any notice of default, the OSAC is required to notify the borrower, in writing, on a regular basis for up to 180 days of the consequences of failing to repay a student loan.~~

~~The OBCE determined in May 2001 that a six-month probation shall be ordered when a notice of default is received from the OSAC. After six months the OBCE will review to see if the default issues have been resolved. (05/01) The policy is outdated. (12/30/11)~~

### **Federal Health Education Assistance Loan (Heal)**

~~When the Board receives a letter from a federal agency concerning a licensee's failure to make payments on a federal Health Education Assistance Loan (HEAL), the Board determined a letter should be sent to the Doctor. The letter shall notice the doctor that the Board knows he/she is on the default list. HEAL loans are not covered by the Oregon State Scholarship Commission provisions of Oregon law. (9/22/98) New HEAL loans were discontinued in 1998. This policy is outdated. (12/30/11)~~

### **TELEMARKETING**

Chiropractors may engage in telemarketing to gain patients. Neither the Board nor anyone else may restrict chiropractors from using telemarketing to advertise. However, the Board does have the ability to proscribe any advertisement that is false, or that could be misleading or deceptive. See OAR 811-015-0045.

As far as telemarketing is concerned, OAR 811-035-0015(24) does not prohibit giving or receiving a commission in the referral of patients for chiropractic services. Due to Article I, section 8 of the Oregon Constitution, administrative rule 811-035-0015(24) does not apply to this situation. (7/22/96)

### **TRAVEL-TO-TREAT**

(See ORS 684.020 And 684.107)

The Board does not have a set limit on the number of times an out of state chiropractor may come into Oregon as long as it is "a single temporary assignment for a specific sporting, performing arts or educational event not to exceed 15 days" and, the doctor "is actively engaged in the practice of chiropractic in the state in which the person is licensed." The Board does not require notification that this provision of law is being utilized. (2/27/97, 9/18/97)

### **X-RAY SERVICES BY CHIROPRACTIC PHYSICIAN**

A chiropractic clinic may take X-rays for another chiropractic physician or doctor. While this does not create a patient relationship with the doctor or other appropriately licensed person taking the films, the chiropractic clinic still has the obligation to abide by the x-ray rules found in OAR 811-030-0020 and OAR 811-030-0030. (addressing shielding, contraindications such as pregnancy, diagnostic quality etc.)

In order to request films, the ordering doctor should include the relevant diagnoses, area of clinical interest, birth date, etc. so that the clinic taking the films has a "double check" that ensures the proper films are taken. It is not necessary for the clinic taking the films to review the entire patient file to determine whether the views ordered are in fact clinically necessary.

It is highly recommended all chiropractic physicians with x-ray equipment review OAR 811-030-0020 and OAR 811-030-0030, which also includes these record keeping requirements:

- The operator shall maintain a record on each exposure of each patient containing the patient's name, the date, the operator's name or initials, the type of exposure and the radiation factors of time, mA, kVp and target film distance, including those exposures resulting in the necessity of repeat exposure for better diagnostic information such as patient motion or poor technical factors. For computerized and automated systems the recording of technique factors is not necessary as long as the equipment is calibrated and maintained. OAR 333-106-045 requires the facility to determine the typical patient exposure for their most common radiographic examinations, i.e. technique chart.
- Each film shall be properly identified by date of exposure, location of X-ray department, patient's name or number, patient's age, right or left marker and postural position marker and indication of the position of the patient.

## **X-RAY (Which Views Are Necessary?)**

Concerning views necessary for proper evaluation of the spine, the Board determined that it is up to the doctor's professional discretion.

However, the standard recognized by the Board is OAR Chapter 333, Division 106(15) which states, "The number of radiographs taken for any radiographic examination should be the minimum number needed to adequately diagnose the problem." Chapter 811 administrative rules and P & U Guidelines should be followed. (12/19/96)

## **APPLICANTS (for Chiropractic)**

### **DISCLOSURE OF SCHOOL RECORDS**

This policy is regarding disclosure of school records without permission of the student.

The Board staff may disclose:

1. name of school,
2. graduation date, and
3. transcript without grades or pass/fail information. (1991)

### **EXAMINATION**

#### **Appeals**

Oregon law chapter 684 does not contemplate appeals. The Board does NOT allow any appeal process and it may deny a license based on failure to pass the test. (5/18/93)

#### **Exam Schedules**

The OBCE will offer at least four Oregon specific examination opportunities each year. Retakes will be given each examination. (10/16/97)

#### **National Board of Chiropractic Examiners (NBCE) Part IV**

Effective February 1, 1998, The Oregon Board of Chiropractic requires the National Board of Chiropractic Examiners' (NBCE) Part IV exam for licensure in Oregon.

All candidates taking the state boards, must show proof of a passing grade in Part IV (in addition to all other application requirements). Candidates will be required to take three (Oregon specific) exams. The three exams include Ethics/Jurisprudence/Public Health, Obstetrics/Gynecology, and Minor Surgery/Proctology.

Reciprocity candidates are not affected by the Board's decision to accept Part IV. Generally, reciprocity candidates are not required to test in any practical exams. (7/18/96; 7/9/98)

#### **Physiotherapy Minimum Educational Requirement**

The Board determined that for a chiropractic college to meet our 120-hour requirement, all their hours must be documented classroom hours. The Board said it was too hard to document clinical hours toward this requirement. (8/20/98)

#### **Special Purposes Examination for Competency (SPEC)**

Reciprocity applicants who lack the required NBCE examinations may request the OBCE's authorization to take the NBCE Special Purpose Examination for Competency (SPEC) under the provisions of ORS 684.052. The Executive Director may authorize this unless there are other reasons for OBCE review. (7/31/2003)

### **Waivers (from application/examination deadlines)**

The Executive Director will determine a finding of fact in each request for waiver of deadlines for applicants wanting to take the Oregon specific examinations and will send the information to each Board member for them to approve or deny. (9/18/97)

### **FELONY RECORD**

The Board may deny a chiropractic applicant licensure with a felony conviction in areas that could be harmful to patients. ORS 684.100(1) states, "The board may refuse to grant a license...upon the following grounds: ... (d) A conviction of a felony or misdemeanor involving moral turpitude."

Any applicant denied a license for this reason has a right to appeal and make his/her case in a contested case hearing. Upon review of the hearing officer's recommendations, the Board will then consider whether to approve the application, with or without conditions, or continue to deny.

### **PRE-PROFESSIONAL LIBERAL ARTS AND SCIENCES POLICY**

At its November 2001 meeting, the OBCE reconsidered its policy on pre-professional education for license application in Oregon. The Board determined that it will accept the Council on Chiropractic Education's (CCE's) standards defined for two-year's education. (11/29/01)

### **WORKING UNDER A LICENSED CHIROPRACTOR**

Chiropractic college interns (12th quarter students) engaged in clinical studies during the period of the students' enrollment in an institution authorized to confer a doctoral degree in chiropractic may work in a chiropractic clinic when the doctor, who must have faculty status with a chiropractic college, is teaching them adjustive technique in an actual 'hands on' situation. The student may perform chiropractic in an instruction mode under the doctor.

(cont.)

The doctor is to refer to the student as an intern or chiropractic student. The student is not to be called a doctor. The doctor and student must get permission from the patient before the student works on the patient. (8/15/91, 7/17/97, 7/9/98)

## **CERTIFIED CHIROPRACTIC ASSISTANTS**

The Certified Chiropractic Assistant (CCA) may perform physiotherapy, electrotherapy, or hydrotherapy once he or she has received the certificate from the Board. The CCA scope of practice does not include performing physical examinations, taking initial histories, taking X-rays, interpretation of postural screening, doing manual muscle testing or performing osseous adjustments or manipulations. (See OAR 811-010-0110 )

### **ANY TRAINED PERSON (INCLUDING CERTIFIED CAS) MAY PERFORM THE FOLLOWING**

- 1) Clarify initial patient intake history, which includes recording or performing height, weight, blood pressure, temperature, and pulse rate.
- 2) Record hand dynamometer readings.
- 3) Demonstrate, teach, check and review with patients the doctor's prescribed exercises
- 4) Facilitate provision of vitamins and/or supplements to patients as ordered by the doctor.
- 5) Relay doctor's instructions to the patient on recommendations of nutritional needs.
- 6) Facilitate provision of cervical pillow or support as recommended by the doctor.
- 7) Make follow-up phone calls to patients on their progress as instructed by the doctor.
- 8) Schedule return office visits for patients as instructed by the doctor.
- 9) Schedule referrals as instructed by the doctor.
- 10) Check patient's body fat percentage.
- 11) Perform postural screenings under the on-site supervision of a chiropractor, but only a Chiropractor may interpret the information.

12) May apply electrodes and conduct surface EMG testing, but the doctor has to interpret the results.

13) This list is not intended to be all-inclusive.

(Updated 11/16/95, 7/18/96; 11/20/08; 4/3/09)

### **COLONICS OR COLONIC THERAPY**

The board determined that colonic therapy does not fall under hydrotherapy, and therefore is not an allowable procedure for CCAs to perform. The Board felt there were inherent risks, such as causing septic shock by rupturing the bowels. (9/28/07)

### **COMPUTERIZED MUSCLE AND INCLINOMETER TESTING**

Certified Chiropractic Assistants may not do computerized muscle or inclinometer testing. The Board considers this to be part of the physical examination. (9/21/00)

### **(DIRECT) SUPERVISION OF CLINIC STAFF**

The OBCE was asked if ~~clinic staff~~ licensed chiropractic assistants could provide therapies in a business space next door to the clinic. The OBCE responded that the chiropractic assistant ~~or staff person~~ who is supervised needs to be in the same office space (defined as the same building or space contiguous) as the supervising doctor. OAR 811-035-0001 states, "Direct supervision' means that the licensed Chiropractic Physician is physically present in the clinic, is monitoring the activities of the supervisee in the clinic and is available to intervene, if necessary."

If an employee and/or independent contractor is independently licensed to perform prescribed services within their scope of practice they may do so without direct supervision of the chiropractic physician. (7/31/03) (12/1/11)

### **ENGLISH PROFICIENCY REQUIREMENT FOR CA APPLICANTS**

The Board reviewed this matter in light of a question from a licensee - May he interpret or provide an interpreter for non-English speaking CA applicants (to successfully complete the application and exam)? The OBCE surveyed other state health regulatory boards and determined that most other boards require that licensees be English-speaking proficient. Many of the other health-related licensing boards already have a policy, rule, or statute requiring applicant's to be English-speaking.

The Board determined that ALL (CA) applicants must be proficient in English in order to complete the chiropractic assistant licensing process in Oregon. (May 2008)

### **FELONY RECORD**

The Board may deny a certified chiropractic assistant applicant certification with a felony conviction in areas that could be harmful to patients. ORS 684.100(1) states, "The board may refuse to grant a license...upon the following grounds: ... (d) A conviction of a felony or misdemeanor involving moral turpitude."

Any applicant denied certification for this reason has a right to appeal and make his/her case in a contested case hearing. Upon review of the hearing officer's recommendations, the Board will then consider whether to approve the application, with or without conditions, or continue to deny.

### **INITIAL TRAINING FOR CA APPLICANTS**

#### **Chiropractic Students Training To Be Chiropractic Assistants**

Seventh (7th) quarter students and above may use the completed course in Physiological Therapeutics in lieu of the OBCE's Initial Training Program to be a certified chiropractic assistant. A copy of their transcript or a letter from the course instructor on college letterhead will be accepted as proof of completion of the course. See OAR 811-010-0045 (3) for other specifics. (4/15/93)

## **Massage Therapists**

The Board determined that a massage therapist must acquire the ~~six-hour~~12 initial training because they are not trained in the hydrotherapy or electrotherapy. (11/99) (01/11)

## **Physical Therapist Assistants**

May PTAs submit their **physical therapist assistant** education in lieu of the OBCE's required ~~six~~12-hour initial training course to be licensed as a certified chiropractic assistant (CCA)?

The Board determined that PTA's will be waived from the ~~six~~12-hour initial training requirement if the PTA education was completed within the past five years, *or if they have been continuously employed in the past five years.* (11/99) (01/11)

## **Supervising DC, Training by the**

Due to a need for more initial training courses for chiropractic assistants, the Board determined that a supervising DC may train his applying CA. The DC must be in attendance, and directly supervising the CA during the training.

The Board determined that the DC must keep adequate documentation and submit evidence to the Board that the CA was appropriately trained according to OAR 811-010-0110. The OBCE developed a form which will meet all the points of this policy and the administrative rule. The form is available by request at the administrative office.

The Supervising DC and chiropractic assistant should understand that this does NOT preclude certification by the OBCE. This process addresses the ~~six~~12-hour initial training only. Each assistant must still apply with the OBCE, take the open book exam and submit the required fees. OAR 811-010-0110 is still in effect and included in the chiropractic assistant application packet. (11/99) (01/11)

## **IONTOPHORESIS**

Chiropractic assistants may perform iontophoresis or phonophoresis under the doctor's supervision as a form of physiotherapy. (11/20/2008)

## **KINESIOTAPING METHOD**

May a certified Chiropractic Assistant perform "Kinesio Taping"? The Kinesio Taping Method involves taping over and around muscles in order to assist and give support to, or prevent, over-contraction. The Board determined if the supervising DC is trained in the taping method, that he or she may also train the certified CA also to perform the method in the clinic, and only while the DC is on premise. The Board considers this a physiotherapy. (3/15/07)

## **LASER LIGHT THERAPY (Excerpt of Laser Light Therapy in Section I-Procedures)**

Following recommendations from the OBCE ETSDP committee (a.k.a. Examinations, Tests, Substances, Devices, And Procedures), the OBCE approved and reaffirmed as standard use of Class I-IIIa lasers/phototherapy for use by chiropractors (as well as certified chiropractic assistants!) as a physiotherapy modality. Chiropractic Assistants are NOT allowed to use the Class IIIb and IV "hot" lasers. (12/20/06)

## **PHONOPHORESIS (See Iontophoresis)**

## **RANGE OF MOTION**

A chiropractor submitted a letter inquiring whether chiropractic assistants or any "trained personnel" may perform range of motion tests. The Board determined that chiropractic assistants or other persons may not perform range of motion tests. According to the administrative rule 811-010-0110(7) for CAs, it is clear that

"the scope of practice does not include performing physical examinations..." The performance of range of motion tests is definitely a physical examination. (12/99)

### **REFLEXOLOGY**

The board was asked whether an UN-licensed person (either CA or DC) may provide reflexology treatment on chiropractic patients within the Oregon chiropractor's clinic. The OBCE responded that this is unlicensed treatment of the chiropractic patients in the chiropractic clinic.

The inquiring physician is also a naturopath and this may be allowed under his naturopathic license for his *naturopathic* patients. Given this difference in scope, the Board reminded the chiropractor to always remember to chart under *which* license these services are being provided.

In conclusion, *ONLY* a person actively licensed in Oregon as a DC or Chiropractic Assistant (under the direct onsite supervision of an Oregon licensed chiropractor), may perform reflexology on the chiropractic patients. (11/20/08)

### **REIKI**

A Doctor of Chiropractic asked if his certified Chiropractic Assistant may practice Reike, a form of massage therapy, in his office without his supervision. The Board determined that the certified CA may perform this type of massage *ONLY* if the supervising DC is also Reike trained, and on premise to supervise. If the certified CA, trained in Reiki, is also an Oregon licensed massage therapist, then that is already allowed with the LMT scope of practice. (3/15/07)

### **TERMINOLOGY**

The use of the terms for chiropractic assistants, "massage therapist" and "therapist" are misleading and should not be used, as per the Oregon Administrative Rule 811-015-0045. The Board also determined that the designation "CCA" or "CA" (see below) should be spelled out, since many people would not recognize the acronym.

The rule was changed so that "Certified" has now been dropped and we are now referring to them simply as "Chiropractic Assistants." (9/16/2008)

### **WORKING FOR OTHER HEALTH-CARE PROVIDERS**

A certified chiropractic assistant (CCA) is only certified to work in a chiropractic office under the direction of a licensed chiropractic physician. Other health care providers may not have their personnel take the Board's CCA exam for certification in their office. (8/15/91)

**SECTION III**  
**OBCE GOVERNANCE**

## **BOARD-EXECUTIVE DIRECTOR RELATIONSHIP**

The Executive Director's responsibilities are the achievement of the Board's Ends Policies and non-violation of Executive Limitations Policies. The Executive Director is empowered to interpret and implement board policy (in the Executive Director's domain, i.e. Ends, Staff Means).

The Board will monitor the Executive Director's performance by one or more of the following means:

- Internal reports: Periodic reports by the Executive Director to the Board.
- External inspection: Auditors, site inspectors, or others may be retained by the Board to report to the Board.
- Direct inspection: Board members may, at the request of the whole Board, directly inspect the implementation of policy. These members have only the authority to report to the Board. They do not have authority to direct the Executive Director in the implementation of policy. (5/15/97) (10/22/98)

## **EXECUTIVE LIMITATIONS POLICY**

The Executive Director may neither cause nor allow any organizational practice that is imprudent, unethical, or contrary to the law of the State of Oregon.

The Executive Director may take no action on public, professional, or consumer complaints without either review by the Board or prior specific policy from the Board.

The Executive Director may take no action which involves chiropractic professional expertise without consulting the Board or formal Board policy.

The Executive Director shall cause the Board to be aware of relevant trends, stakeholder concerns, and changes in assumptions upon which any Board policy has previously been established. (5/15/97)

If a public protection issue comes up between board meetings, after having notified all board members of the proposed action, the Board President may authorize the Executive Director to give public notice of the potential or actual violation of law or administrative rule. The Board will review this action at their next meeting.(5/18/06)

## **GOVERNING MANNER**

### **Board Committees**

Committees may be designated by statute, rule, or by the Board itself.

Committees exist to help the Board do its job. Committees exist and must function at the level of the Board. Board-executive and board-staff relationships must be preserved. Committees exist to gather and assimilate information, present various policy alternatives and courses of action, and the implications of these without forming specific recommendations, unless directed to do so by the Board. (5/15/97)

### **Board Meetings**

Board meetings will be open to the public except when executive session is officially announced consistent with the laws of the State.

The Board is the sole authority over its own agenda. The President will exercise this authority on behalf of the Board. One Board member may add agenda items. One Board member may not delete them.

All new business will be screened for appropriateness prior to discussion. It is important that no one start speaking to the content of an issue before dealing with its form: What category of issue is this?

It is understood that there will always be a mix of policy and management issues before the Board. (5/15/97)

## **Board Member Obligations**

Board members are obliged to attend all official board meetings as per ORS 182.010. An unexcused absence may be grounds for dismissal.

Board members are expected to prepare for meetings, participate in discussion, follow through with tasks and assignments, and observe the boundaries of discipline established by the Board and enforced by the President. (5/15/97)

## **Board Officers**

Board Officers exist to help the Board do its job, not as powers unto themselves.

In accordance with ORS 684.140, the officers of the Board will be President, Vice-President, and Secretary-Treasurer. The President is responsible for the integrity of board process. The Vice-President will act in the absence of the President. The Secretary-Treasurer is responsible for the integrity of board documents. The Board President is empowered to interpret and implement board policy (in the Board's domain, i.e. Board-CEO Linkage, Governance Process). (5/97) (10/98)

## **Board Performance**

The Board is responsible for its own development, its own job design, its own discipline and its own performance. It is responsible to the Administrative branch of State government.

The Board will:

- Approach its tasks with an emphasis on strategic rather than administrative function and managerial detail.
- Work in partnership with the public and stakeholders.
- Observe clear distinctions between Board and staff roles and functions.
- Be focused proactively on the future. (5/15/97)

## **Diversity and Consensus**

Healthy governance requires that Board members agree that any position resulting from fair process is the position of the Board. Fair process demands pursuit of diverse opinions, courteous consideration of different points of view, respectful discussion, staying on task, and declaring a position. Consensus is desirable but not required. A majority vote carries each decision.

Once a decision is reached, whether by consensus or majority vote, the Board speaks with one voice. No individual board member may speak for the Board without the consent of the Board. (5/17/97; 7/9/98)

## **Parliamentary Procedure**

Board meetings and deliberations shall be governed by Roberts Rules of Procedure, Newly Revised. (3/16/06)

## **Trusteeship**

The Board acts on behalf of the people of Oregon to achieve their desired results for the chiropractic profession: safe, high quality, and ethical chiropractic care. (5/15/97)

**SECTION IV**  
**ADMINISTRATIVE OFFICE POLICIES and**  
**PROCEDURES**

## **CONTESTED CASE PROCEEDINGS**

### **Depositions**

The OBCE has discretionary authority and may order the deposition of a material witness. Any party may petition the OBCE for discovery of witnesses in any manner prescribed by law in civil actions. The petition shall state the name and address of the witness, a showing of the materiality of the witness's testimony, an explanation of why a deposition rather than informal or other means of discovery is necessary and a request that the witness's testimony be taken before an individual named in the request for the purpose of recording testimony. Only the OBCE may order testimony be taken by deposition. The OBCE will evaluate the petition for deposition based on the following criteria; does the case present any special circumstances warranting a pre hearing deposition; is a deposition necessary to perpetuate testimony, is the witness unavailable for hearing, or will an appearance at the hearing present an undue hardship on the witness. The OBCE has sole discretion to decide when special circumstances exist. (9/21/2000)

### **Recusal - in Complaint Review and Contested Case Proceedings**

The right to a fair hearing includes a right to an unbiased fact finder. The Board can avoid challenges to actions taken by keeping the investigative function separate from the deciding function. Here are some examples, which would require board members to recuse themselves from a specific case or issue:

1. Board member is a witness or expert who will appear and testify at hearing for the Board.
2. Board member is related to the licensee or applicant at issue.
3. Board member is a personal friend of the licensee or applicant at issue.
4. Board member assisted the board or board investigator in investigating the complaint.
5. Board member filed the complaint with the board.
6. Board member has a professional relationship with the licensee or applicant.
7. Board member is an owner and/or partner in the same business in which the Licensee or applicant is involved.
8. Any conflicts of interest that prevent the Board member from making an objective review of the Licensee or Applicant in the discipline matter.
9. Board member has a close personal or professional involvement with the patient or the patient's insurer.

When Board members determine recusal is appropriate they should physically remove themselves from the board meeting to avoid any accusations of a suspect board vote or deliberation. (2/20/03)

### **Settlement Conferences**

Upon receipt of a request for contested case hearing (following issuance of a Notice of Proposed Disciplinary Action), the OBCE will offer to the respondent licensee and attorney (if represented) a settlement conference to be convened within 60 days.

The purpose of this is to provide an opportunity for the OBCE and respondent licensee to pursue resolution in a face-to-face meeting instead of proceeding to contested case hearing.

The respondent licensee will be invited to attend along with his/her legal counsel. The Executive Director and the Assistant Attorney General will represent the OBCE.

The licensee or applicant will incur no fee for this service and it is voluntary. (04/17/03)

## **DISCLOSURE POLICY (WHAT IS PUBLIC & WHAT IS NOT)**

All proposed and final orders of the Board in disciplinary cases which determine a result adverse to the doctor are public documents. This does not include letters in which the Board does not determine a violation. (SB 235, 1997)

All other information pertaining to a complaint (i.e. investigator's report, Peer Review report, patient files, complaint and answer) is confidential information, except as provided by SB 235 (1997) and SB 236 (1999).

## **ELECTRONIC INFORMATION ASSETS POLICY**

DAS Policy 107-004-110 is in effect with the following agency approved options.

OBCE employees may use email for limited, incidental personal use.

OBCE employees are allowed limited, incidental personal use of internet using agency owned computers as long as there is no or insignificant cost to the state and does not otherwise violate DAS Policy 107-004-110.

OBCE employees may play audio CDs or DVDs using state equipment provided it does not interfere with their or other's work.

The OBCE Executive Director is responsible for monitoring and compliance and will periodically review internet usage reports. [www.das.state.or.us/DAS/OP/docs/policy/state/107-004-110.pdf](http://www.das.state.or.us/DAS/OP/docs/policy/state/107-004-110.pdf)

## **EXAMINATION**

### **Analysis and Questions**

Staff will continue to develop item analyses on all exams after each test date. The Board will continue to review questions with a 50% or more fail rate unless previously reviewed and accepted by the Board.

The policy of the Oregon Board of Chiropractic Examiners regarding exam analysis and questions for review is as follows:

Staff will submit a copy of an exam subject's questionable items (Minor surgery, Obstetrics and Gynecology) to an expert in that respective field at least one week prior to the next board meeting. Ethics questions will be referred to a board member at least one week prior to the next board meeting.

- The specific questions and the candidates' responses (i.e. how many selected choice A or B instead of the correct choice C; or how many selected True instead of False) will be sent out. The "analyses" will not be sent.
- The experts and board members will be asked to submit their written opinions of each test item, its answers and/or distracters. The Board will consider the recommendations at the next meeting.

The intent of this policy is to better prepare the Board to address issues that may not be at the forefront of their knowledge, and to expedite the Board's review. (8/15/96)

### **Item Review**

A discussion held in the April 2003 board meeting spoke to "reliability" of test items within the Oregon Specifics Examination. At the suggestion of the Board's test expert, "the acceptable time frame for review of this type exam is probably every five years"...

The Board voted to review the test items of the Oregon Specifics exam every five years implementing a practice analysis and test specifications. (04/17/03)

### **Approval of Examination Results**

The Board delegated to the Executive Director the authority to approve the Oregon Specific examination results, if all questions concerning individual test questions have been resolved in consultation with subject matter experts prior to the next meeting of the Board. (8/20/98)

### **Review of Individual Test Results**

After each examination, the Board reviews a sampling of test questions. (Administrative Office Policies Examination: Analysis & Questions) At that time, if there are any questions that demonstrate a high failure rate, the Board considers whether credit should be given, or whether the question should be removed from the test altogether. According to Board policy, and based on the Board's test experts' recommendations, any further review of an individual's test results is not appropriate. (10/17/97) Reviews will not be offered. (5/18/93)

### **EXPERIMENTAL LIST OF EQUIPMENT AND PROCEDURES**

The Board has on file two outdated lists of equipment/procedures that were compiled several years ago under the old "Experimental Equipment and Procedures" rule.

The Board reviewed a report by staff regarding the old rule and the origins of the old list of equipment/procedures considered experimental.

The OBCE determined that the old list (of experimental equipment/procedures) is invalid. The process for determining experimental/investigational status is different now. Some of the procedures should not be considered *experimental* as that might confer some legitimacy on them if they are presently called *investigational*. (3/19/98)

### **FINAL ORDER BY DEFAULT**

When a Notice of Proposed Disciplinary Action is issued, the licensee has been served, and the 30 day period for a response and hearing request expires, without any response from the licensee, the Executive Director is authorized to issue a Final Notice by Default without having to convene another board meeting for a vote. (2/20/03)

### **LIENS AGAINST REAL PROPERTY**

(regarding the OBCE's collection of liquidated and delinquent accounts)

As a result of licensees who refuse to pay, or stop payment, or pay sporadically (at their will), The board has directed staff to issue a Judgment Lien against licensee's real property asset/s. By State of Oregon collection policies, a lien is an allowable "other means" to collect past due account receivables.

By filing a lien in one or more counties against any known or unknown real property owned by the licensee, the Board of Chiropractic Examiners will be able to recover the dollars due it, and as agreed to by the licensee/s in final orders. The Board's intent to file a lien is not required to be cited in the Final Order (*current language is already inserted which states that the OBCE will take necessary action to recover the amount due, including charging interest, refer to collections, etc.*)

In order to place a lien on any property, the OBCE must provide proof of a valid Final Order (or Stipulated Final Order or similar); each county requires this proof to file a Judgment Lien.

The OBCE will only file a Judgment Lien against a licensee when the past due amount owed is \$1000 or more. The Board set a guideline to issue the lien between 90 days (the State of Oregon's requirement) failure to pay and six months considering extenuating circumstances. The Board agreed that the cost of filing the lien should be added to the amount due the Board.

Lastly, the OBCE may file a Judgment Lien in every county in which the debtor may own any real property for residence or business purposes. Once the agency recovers the full amount due, the lien will be released. (7/21/05)

### **MEETING MINUTES**

Staff produces the Board's draft public meeting minutes within 10 days of the most recent board meeting. The

draft minutes are shared by fax or email with OBCE members and comments collected within five days. If needed, clarifications/changes are made by staff and shared again the OBCE President and OBCE Secretary, and other OBCE members if they request. The Board delegates final approval to the OBCE President and Secretary, and then the minutes can be placed on the OBCE's Web page and are available for distribution in the next public notice. (02/20/03)

## **PEER REVIEW**

If the Peer Review Committee encounters indications of questionable practices by complaining doctors, it is the Board's intent for such corollary factors to be considered and commented upon. This is a statutory requirement. ORS 684.200 (1) says any licensee shall report to the Board any suspected violations of this chapter.

It is not acceptable to the Board that the Peer Review committee develop interpretations and recommendations which may become "standards" during their investigation and deliberations. (6/20/96)

When a case is referred to Peer Review and a letter is sent to the doctor requesting that he/she appear before Peer Review, the letter will include: 1) A statement that this case may result in disciplinary action and impact the chiropractor's license, 2) Notification that the chiropractor has the right to have an attorney present at Peer Review interviews, and 3) A copy of the relevant statutory and administrative rules and the relevant statutory and administrative citations.

The Board and the Peer Review Committee reserve the right to ask for any additional pertinent information from either the doctor or any other party. (2/96)

## **PRESS RELEASES**

Press releases may be issued by the OBCE when the Board or the Board President, acting for the Board, determines that an effort to make public certain actions meets the goals of the Board's Strategic Plan, specifically the Disciplinary and Liaison/ Communication goals. Professional association will be given advance notice of any press releases regarding proposed or final disciplinary orders. (11/99)

## **RENEWAL**

### **"Grace Period" Post-Renewal**

The penalty for late renewal will be assessed as of the first day after the license expiration date and each week thereafter. The fees remain at \$100/week; max. \$500.

By adopting this policy the grace period for Chiropractic Assistants is eliminated. If a CCA's certificate is not renewed by July 31, it is expired and the CA must reapply. (9/21/00)

### **Renewals Received during the Grace Period**

The Board determined that the "post-mark" policy would no longer be in effect during the grace period. Any licensee submitting documentation during the 30-day grace period will be assessed a penalty as of the date received, NOT by the postmark. (*For example, a renewal fee mailed August 6<sup>th</sup>, and received August 10<sup>th</sup> will be assessed the two-week penalty of \$200, because it was received the second week of the month.*) (9/21/00)

## **SEXUAL MISCONDUCT**

The Oregon Board of Chiropractic Examiners is vigilant in addressing issues concerning doctor-patient boundary violations. Any conduct of a sexual nature in the confines of the doctor-patient relationship, including those of a consensual nature, is inherently inappropriate because of the power relationship involved.

In this kind of a complaint, the Board investigator may immediately interview the complainant and doctor to get a statement. Unlike other complaints, the doctor may not be notified by mail.

The Board's complaint process may involve an interview with either the Board or the Board's Peer Review Investigatory Committee. Both the proposed and final orders of the Board are public documents, and publicly

noticed in the Board's newsletter to interested parties and the press.

Sanctions by the Board do not absolve a doctor of any civil liability. In cases where the conduct is not consensual, the Board's sanctions will likely be more severe, up to and including emergency suspension and revocation.

### **SOCIAL SECURITY NUMBERS**

As part of the application for an initial or renewed occupational, or professional license, certification, or registration issued by the Oregon Board of Chiropractic Examiners, an applicant is required to provide their Social Security Number to this Agency. This is mandatory. The authority for this requirement is ORS 25.785, ORS 305.385, 42 USC 405(c)(2)(C)(1), and 42 USC, 666(a)(13). Failure to provide a Social Security Number will be a basis to refuse to issue or renew the license, certification, or registration sought. This record of the Social Security Number will be used for child support enforcement and tax administration purposes (including identification) only, unless the applicant authorizes other uses of the number. Although a number other than the Social Security Number appears on the face of the licenses, certificates, or registrations issued by the Board of Chiropractic Examiners, the Social Security Number will remain on file with this Agency. (5/31/00)

**APPENDIX A**  
**EXAMINATIONS, TESTS, SUBSTANCES,**  
**DEVICES, and PROCEDURES (ETSDP)**





## **E.T.S.D.P. EVALUATION QUESTIONS**

### **Clinical Rationale**

Is this an exam, test, substance, device or procedure, herein after referred to as ETSDP?

Describe in detail your ETSDP.

Describe the clinical rationale for your ETSDP.

How do you determine appropriate termination of care and/or consultation to other providers with special skills/knowledge for the welfare of the patient?

If this is a diagnostic procedure, are you using it by itself or in addition to generally accepted diagnostic procedures?

### **Taught at accredited chiropractic school**

Is this ETSDP taught at a chiropractic school accredited by the Council on Chiropractic Education or its successor at any time since 1974? If so, which one(s)?

### **Consensus**

Do you have evidence of consensus on safety and/or effectiveness and/or of practices generally and currently followed and accepted by persons licensed to practice chiropractic in this state?

### **Outcome assessment measures**

Choose from the following or list outcome assessment measures:

- visual analog scale
- pain drawing
- oswestry questionnaire
- objective signs
- general patient satisfaction
- other

### **Literature based references**

Cite any literature discussing indications, contraindications, and beneficial, adverse or unintended effects of this ETSDP.

Please indicate the current level of support for this ETSDP from the following:

- 1) One or more randomized controlled clinical trials or experimental studies that address reliability, validity, positive predictive value, discrimination, sensitivity and specificity.
- 2) One or more well designed controlled observational clinical studies such as case control or cohort studies published in referenced journals.
- 3) Clinically relevant basic science studies addressing reliability, validity, positive predictive value, discrimination, sensitivity and specificity published in referenced journals.
- 4) Expert opinion, descriptive studies, case report.

### **Consistent with generally recognized contraindications to chiropractic procedures**

Please list any known or suspected contraindications.

Is there a subpopulation that would be at higher risk for this ETSDP? (e.g. people with osteoporosis, skin lesions, heart disease, etc.)

**Potential benefit outweighs the potential risk to the patient.**

Does the ETSDP affect any structure (either mechanically, chemically, thermally, or electrically, etc.) in such a way that a beneficial effect can be created?

Does this ETSDP affect any structure (either mechanically, chemically, thermally, electrically, etc.) in such a way that an adverse effect can be created?

Describe the beneficial effects your patients have experienced from this ETSDP.

Describe any adverse or unintended effects your patients have experienced from this ETSDP.

Please rate the risk factor if this ETSDP is used improperly on select populations. Choose from the following categories:

- 1) an extremely remote chance of serious injury
- 2) a remote chance of serious injury
- 3) a slight chance of serious injury
- 4) a significant chance of serious injury
- 5) extremely likely chance of serious injury

Please describe.

Please rate the risk factor if this ETSDP is used properly on the general population. Choose from the following categories:

- 1) an extremely remote chance of serious injury
- 2) a remote chance of serious injury
- 3) a slight chance of serious injury
- 4) a significant chance of serious injury
- 5) extremely likely chance of serious injury

Please describe.

**Alternatives**

Is there a standard ETSDP for the equivalent condition? If yes, does your ETSDP expose a patient to more risk or harm than the standard treatment for an equivalent condition?

List alternatives to this ETSDP if any.

What are the suspected effects, results or consequences of doing nothing?

**General**

Are you currently conducting or soon planning to conduct an organized investigation into the use of the ETSDP?

**OREGON ADMINISTRATIVE RULE 811-015-0070 E.T.S.D.P.**

**Scope Of Practice Regarding Examinations, Tests, Substances, Devices And Procedures**

(1) The Board may examine any diagnostic and/or therapeutic examination, test, substance, device or procedure, herein after referred to as ETSDP, to determine its acceptability for patient care. The Board may require a Chiropractic physician to provide information on any ETSDP for determination of its status. The

Board may take into account all relevant factors and practices, including but not limited to, the practices generally and currently followed and accepted by persons licensed to practice chiropractic in the state, the teachings at chiropractic schools accredited by the Council on Chiropractic Education or its successor at any time since 1974, relevant technical reports published in recognized journals and the desirability of reasonable experimentation in the furtherance of the chiropractic arts.

(2) A Chiropractic physician may use any diagnostic and/or therapeutic ETSDP, which is considered standard. A standard diagnostic and/or therapeutic ETSDP is one in which one or more of the following criteria have been satisfied:

(a) is taught or has been taught by a chiropractic school accredited by the Council on Chiropractic Education or its successor at any time since 1974, or health professions' courses taught by regionally accredited colleges with subject matter that is within the scope of chiropractic practice and has not been disapproved by the Board; or

(b) has been approved by the Board through the petition process.

(A) The petition requires a formalized agreement of ten percent (10%) or more of the Chiropractic physicians, holding an active chiropractic license in Oregon, attesting to the safety and efficacy of a particular ETSDP. The petition shall be submitted in writing to the Board by any party wishing to establish any ETSDP as standard. It is the responsibility of the petitioner to gather the required evidence and supporting statements. It is the sole responsibility and discretion of the Board to review the sufficiency of the evidence in the petition and to make a determination whether to concur and affirm the ETSDP as standard or to deny the petition. The Board may, but is not required to, hold a public hearing on any petition. The Board shall make its determination and reply to the petitioner within 180 days of receipt of the petition unless the Board and the petitioner mutually agree to extend the deadline.

(B) The petition shall specifically address the following issues:

(i) The kind of ETSDP that is the subject of the petition, i.e., whether it is an examination, a test, a substance, a device, a procedure, or a combination thereof;

(ii) A detailed description of the proposed ETSDP;

(iii) The clinical rationale for the ETSDP;

(iv) A method for determination of appropriate termination of care and/or consultation to other providers with special skills/knowledge for the welfare of the patient;

(v) Whether the proposed ETSDP is to be used by itself or used in addition to any other generally accepted or standard ETSDP;

(vi) A description of known or anticipated contraindications; risks, and benefits;

(vii) A description of any subpopulations for which greater risk or benefit is expected;

(viii) A description of any standard ETSDP for the equivalent condition together with its relative risks and benefits; and

(ix) An assessment of the expected consequences of withholding the proposed ETSDP.

(c) is supported by adequate evidence of clinical efficacy as determined by the Board. In determining adequacy the Board may consider whether the ETSDP:

(A) has clinical rationale;

(B) has valid outcome assessment measures;

(C) is supported in peer reviewed literature;

(D) is consistent with generally recognized contraindications to chiropractic procedures; and

(E) the potential benefit outweighs the potential risk to the patient.

(3) A Chiropractic physician may use any diagnostic and/or therapeutic ETSDP that has not met the criteria of subsection (2)(a) or (b) or (c) of this rule as investigational. It must show potential merit for effectiveness and be of acceptable risk. Documentation requirements are based on potential risk to the patient. All investigational diagnostic ETSDP's must include or be accompanied by standard diagnostic procedures until full Board approval is attained under the criteria cited in subsection (2)(a) or (b) or (c) of this rule. Nothing in this section is intended to interfere with the right of any patient to refuse standard or investigational ETSDP's. In determining risk, the Board may use the following criteria:

(a) For minimal risk procedures, defined as those which when properly or improperly performed on the

general population would have a slight chance of a slight injury and when properly performed on select populations have an extremely remote chance of serious injury,

(A) informed consent is suggested but not required; and

(B) the Chiropractic physician is recommended, but not required, to participate in or conduct a formal investigation of the procedure.

(b) For low risk procedures, defined as those which when properly performed on the general population have a slight chance of mild injury, when improperly performed on the general public have a mild chance of mild to moderate injury, and when properly performed in select populations have a remote chance of serious injury,

(A) informed consent is required; and

(B) the Chiropractic physician is recommended but not required to participate or conduct a formal investigation of the procedure.

(c) For moderate risk procedures, defined as those which when properly performed on the general public have a significant chance of mild injury and a mild chance of moderate injury, when improperly performed on the general population have a slight chance of severe injury, and when properly performed in select populations have a slight chance of serious injury,

(A) written informed consent is required; and

(B) the Chiropractic physician is recommended but not required to participate or conduct a formal investigation of the procedure.

(d) For high risk procedures, those which when properly performed on the general population have a significant chance of moderate injury and a slight chance of serious injury, when improperly performed on the general population have a significant chance of serious injury, and when properly performed in select populations have a significant chance of serious injury,

(A) written informed consent is required; and

(B) the Chiropractic physician is required to participate in or conduct a formal investigation of the procedure under the auspices of, or in conjunction with, any other health care professionals knowledgeable and competent in the care and treatment of potential serious injuries.

(e) Board approval is required of all moderate or high risk procedures.

(4) The Board shall maintain a list of ETSDP's which have been reviewed by the Board and have been determined to be unacceptable or approved as investigational.

(5) A Chiropractic physician may not use any diagnostic and/or therapeutic ETSDP's which have been determined by the Board to be unacceptable.

*Statutory Authority: ORS 68*

*Statutes Implemented: ORS 684.155*

*Adopted Eff. 12/19/95)*

**APPENDIX B**

**AUTHORIZATION TO USE AND DISCLOSE**

**PROTECTED HEALTH INFORMATION**

**ORS 192.518 to ORS 192.524 - Sept 2003**

## PROTECTED HEALTH INFORMATION

**192.518 Policy for protected health information.** (1) It is the policy of the State of Oregon that an individual has:

(a) The right to have protected health information of the individual safeguarded from unlawful use or disclosure; and

(b) The right to access and review protected health information of the individual.

(2) In addition to the rights and obligations expressed in ORS 192.518 to 192.529, the federal Health Insurance Portability and Accountability Act privacy regulations, 45 C.F.R. parts 160 and 164, establish additional rights and obligations regarding the use and disclosure of protected health information and the rights of individuals regarding the protected health information of the individual. [2003 c.86 §1]

**192.519 Definitions for ORS 192.518 to 192.529.** As used in ORS 192.518 to 192.529:

(1) “Authorization” means a document written in plain language that contains at least the following:

(a) A description of the information to be used or disclosed that identifies the information in a specific and meaningful way;

(b) The name or other specific identification of the person or persons authorized to make the requested use or disclosure;

(c) The name or other specific identification of the person or persons to whom the covered entity may make the requested use or disclosure;

(d) A description of each purpose of the requested use or disclosure, including but not limited to a statement that the use or disclosure is at the request of the individual;

(e) An expiration date or an expiration event that relates to the individual or the purpose of the use or disclosure;

(f) The signature of the individual or personal representative of the individual and the date;

(g) A description of the authority of the personal representative, if applicable; and

(h) Statements adequate to place the individual on notice of the following:

(A) The individual’s right to revoke the authorization in writing;

(B) The exceptions to the right to revoke the authorization;

(C) The ability or inability to condition treatment, payment, enrollment or eligibility for benefits on whether the individual signs the authorization; and

(D) The potential for information disclosed pursuant to the authorization to be subject to redisclosure by the recipient and no longer protected.

(2) “Covered entity” means:

(a) A state health plan;

(b) A health insurer;

(c) A health care provider that transmits any health information in electronic form to carry out financial or administrative activities in connection with a transaction covered by ORS 192.518 to 192.529; or

(d) A health care clearinghouse.

(3) “Health care” means care, services or supplies related to the health of an individual.

(4) “Health care operations” includes but is not limited to:

(a) Quality assessment, accreditation, auditing and improvement activities;

(b) Case management and care coordination;

(c) Reviewing the competence, qualifications or performance of health care providers or health insurers;

(d) Underwriting activities;

(e) Arranging for legal services;

(f) Business planning;

(g) Customer services;

(h) Resolving internal grievances;

(i) Creating de-identified information; and

(j) Fundraising.

(5) “Health care provider” includes but is not limited to:

- (a) A psychologist, occupational therapist, clinical social worker, professional counselor or marriage and family therapist licensed under ORS chapter 675 or an employee of the psychologist, occupational therapist, clinical social worker, professional counselor or marriage and family therapist;
- (b) A physician, podiatric physician and surgeon, physician assistant or acupuncturist licensed under ORS chapter 677 or an employee of the physician, podiatric physician and surgeon, physician assistant or acupuncturist;
- (c) A nurse or nursing home administrator licensed under ORS chapter 678 or an employee of the nurse or nursing home administrator;
- (d) A dentist licensed under ORS chapter 679 or an employee of the dentist;
- (e) A dental hygienist or denturist licensed under ORS chapter 680 or an employee of the dental hygienist or denturist;
- (f) A speech-language pathologist or audiologist licensed under ORS chapter 681 or an employee of the speech-language pathologist or audiologist;
- (g) An emergency medical technician certified under ORS chapter 682;
- (h) An optometrist licensed under ORS chapter 683 or an employee of the optometrist;
- (i) A chiropractic physician licensed under ORS chapter 684 or an employee of the chiropractic physician;
- (j) A naturopathic physician licensed under ORS chapter 685 or an employee of the naturopathic physician;
- (k) A massage therapist licensed under ORS 687.011 to 687.250 or an employee of the massage therapist;
- (L) A direct entry midwife licensed under ORS 687.405 to 687.495 or an employee of the direct entry midwife;
- (m) A physical therapist licensed under ORS 688.010 to 688.201 or an employee of the physical therapist;
- (n) A radiologic technologist licensed under ORS 688.405 to 688.605 or an employee of the radiologic technologist;
- (o) A respiratory care practitioner licensed under ORS 688.800 to 688.840 or an employee of the respiratory care practitioner;
- (p) A pharmacist licensed under ORS chapter 689 or an employee of the pharmacist;
- (q) A dietitian licensed under ORS 691.405 to 691.585 or an employee of the dietitian;
- (r) A funeral service practitioner licensed under ORS chapter 692 or an employee of the funeral service practitioner;
- (s) A health care facility as defined in ORS 442.015;
- (t) A home health agency as defined in ORS 443.005;
- (u) A hospice program as defined in ORS 443.850;
- (v) A clinical laboratory as defined in ORS 438.010;
- (w) A pharmacy as defined in ORS 689.005;
- (x) A diabetes self-management program as defined in ORS 743A.184; and
- (y) Any other person or entity that furnishes, bills for or is paid for health care in the normal course of business.

(6) “Health information” means any oral or written information in any form or medium that:

- (a) Is created or received by a covered entity, a public health authority, an employer, a life insurer, a school, a university or a health care provider that is not a covered entity; and
- (b) Relates to:
  - (A) The past, present or future physical or mental health or condition of an individual;
  - (B) The provision of health care to an individual; or
  - (C) The past, present or future payment for the provision of health care to an individual.

(7) “Health insurer” means:

- (a) An insurer as defined in ORS 731.106 who offers:
  - (A) A health benefit plan as defined in ORS 743.730;
  - (B) A short term health insurance policy, the duration of which does not exceed six months including renewals;
  - (C) A student health insurance policy;

(D) A Medicare supplemental policy; or

(E) A dental only policy.

(b) The Oregon Medical Insurance Pool operated by the Oregon Medical Insurance Pool Board under ORS 735.600 to 735.650.

(8) “Individually identifiable health information” means any oral or written health information in any form or medium that is:

(a) Created or received by a covered entity, an employer or a health care provider that is not a covered entity; and

(b) Identifiable to an individual, including demographic information that identifies the individual, or for which there is a reasonable basis to believe the information can be used to identify an individual, and that relates to:

(A) The past, present or future physical or mental health or condition of an individual;

(B) The provision of health care to an individual; or

(C) The past, present or future payment for the provision of health care to an individual.

(9) “Payment” includes but is not limited to:

(a) Efforts to obtain premiums or reimbursement;

(b) Determining eligibility or coverage;

(c) Billing activities;

(d) Claims management;

(e) Reviewing health care to determine medical necessity;

(f) Utilization review; and

(g) Disclosures to consumer reporting agencies.

(10) “Personal representative” includes but is not limited to:

(a) A person appointed as a guardian under ORS 125.305, 419B.370, 419C.481 or 419C.555 with authority to make medical and health care decisions;

(b) A person appointed as a health care representative under ORS 127.505 to 127.660 or a representative under ORS 127.700 to 127.737 to make health care decisions or mental health treatment decisions;

(c) A person appointed as a personal representative under ORS chapter 113; and

(d) A person described in ORS 192.526.

(11)(a) “Protected health information” means individually identifiable health information that is maintained or transmitted in any form of electronic or other medium by a covered entity.

(b) “Protected health information” does not mean individually identifiable health information in:

(A) Education records covered by the federal Family Educational Rights and Privacy Act (20 U.S.C. 1232g);

(B) Records described at 20 U.S.C. 1232g(a)(4)(B)(iv); or

(C) Employment records held by a covered entity in its role as employer.

(12) “State health plan” means:

(a) The state Medicaid program;

(b) The Oregon State Children’s Health Insurance Program; or

(c) The Family Health Insurance Assistance Program established in ORS 735.720 to 735.740.

(13) “Treatment” includes but is not limited to:

(a) The provision, coordination or management of health care; and

(b) Consultations and referrals between health care providers. [2003 c.86 §2; 2005 c.253 §1]

**192.520 Health care provider and state health plan authority.** A health care provider or state health plan:

(1) May use or disclose protected health information of an individual in a manner that is consistent with an authorization provided by the individual or a personal representative of the individual.

(2) May use or disclose protected health information of an individual without obtaining an authorization from the individual or a personal representative of the individual:

(a) For the provider’s or plan’s own treatment, payment or health care operations; or

(b) As otherwise permitted or required by state or federal law or by order of the court.

(3) May disclose protected health information of an individual without obtaining an authorization from the individual or a personal representative of the individual:

(a) To another covered entity for health care operations activities of the entity that receives the information if:

(A) Each entity has or had a relationship with the individual who is the subject of the protected health information; and

(B) The protected health information pertains to the relationship and the disclosure is for the purpose of:

(i) Health care operations as listed in ORS 192.519 (4)(a) or (b); or

(ii) Health care fraud and abuse detection or compliance;

(b) To another covered entity or any other health care provider for treatment activities of a health care provider; or

(c) To another covered entity or any other health care provider for the payment activities of the entity that receives that information. [2003 c.86 §3]

**192.521 Health care provider and state health plan charges.** A health care provider or state health plan that receives an authorization to disclose protected health information may charge:

(1)(a) No more than \$30 for copying 10 or fewer pages of written material, no more than 50 cents per page for pages 11 through 50 and no more than 25 cents for each additional page; and

(b) A bonus charge of \$5 if the request for records is processed and the records are mailed by first class mail to the requester within seven business days after the date of the request;

(2) Postage costs to mail copies of protected health information or an explanation or summary of protected health information, if requested by an individual or a personal representative of the individual; and

(3) Actual costs of preparing an explanation or summary of protected health information, if requested by an individual or a personal representative of the individual. [2003 c.86 §4; 2007 c.812 §1]

**AUTHORIZATION TO USE AND DISCLOSE PROTECTED HEALTH INFORMATION**

I authorize: \_\_\_\_\_ (Name of person/entity disclosing information) to use and disclose a copy of the specific health information described below regarding: \_\_\_\_\_ (Name of individual) consisting of: (Describe information to be used/disclosed)

\_\_\_\_\_

to: \_\_\_\_\_ (Name and address of recipient or recipients) for the purpose of: (Describe each purpose of disclosure or indicate that the disclosure is at the request of the individual)

\_\_\_\_\_

\_\_\_\_\_

If the information to be disclosed contains any of the types of records or information listed below, additional laws relating to the use and disclosure of the information may apply. I understand and agree that this information will be disclosed if I place my initials in the applicable space next to the type of information.

- \_\_\_\_\_ HIV/AIDS information
- \_\_\_\_\_ Mental health information
- \_\_\_\_\_ Genetic testing information
- \_\_\_\_\_ Drug/alcohol diagnosis, treatment, or referral information.

I understand that the information used or disclosed pursuant to this authorization may be subject to redisclosure and no longer be protected under federal law. However, I also understand that federal or state law may restrict redisclosure of HIV/AIDS information, mental health information, genetic testing information and drug/alcohol diagnosis, treatment or referral information.

**PROVIDER INFORMATION**

You do not need to sign this authorization. Refusal to sign the authorization will not adversely affect your ability to receive health care services or reimbursement for services. The only circumstance when refusal to sign means you will not receive health care services is if the health care services are solely for the purpose of providing health information to someone else and the authorization is necessary to make that disclosure.

You may revoke this authorization in writing at any time. If you revoke your authorization, the information described above may no longer be used or disclosed for the purposes described in this written authorization. The only exception is when a covered entity has taken action in reliance on the authorization or the authorization was obtained as a condition of obtaining insurance coverage.

To revoke this authorization, please send a written statement to \_\_\_\_\_ (contact person) at \_\_\_\_\_ (address of person/entity disclosing information) and state that you are revoking this authorization.

**SIGNATURE**

I have read this authorization and I understand it. Unless revoked, this authorization expires \_\_\_\_\_ (insert either applicable date or event).

By: \_\_\_\_\_  
(individual or personal representative)

Date: \_\_\_\_\_

Description of personal representative's authority:

**APPENDIX C**

**STANDARDS FOR USE OF BREAST**

**THERMOGRAPHY IMAGING IN**

**CHIROPRACTIC PRACTICE**

# OBCE's Standards for Use of Breast Thermography Imaging in Chiropractic Practice

- Definition of Clinical Thermography
- Breast Thermography Education
- Equipment Guidelines
- Informed Consent

The Oregon Board of Chiropractic Examiners has determined that breast thermography is investigational. Investigational means further study is warranted, evidence is equivocal or insufficient, the patient has to evaluate their own risk and it is not standard. Standard means that it is taught in a chiropractic college or otherwise accepted in the chiropractic profession.

## **Definition of Clinical Thermography**

Thermography, when used in a clinical setting, is an imaging procedure that detects, records, and produces an image (thermogram) of a patient's skin surface temperatures and/or thermal patterns. The procedure uses equipment that can provide both qualitative and quantitative representations of these temperature patterns.

Thermography does not entail the use of ionizing radiation, venous access, or other invasive procedures; therefore, the examination poses no harm to the patient. Clinical thermography is appropriate and germane to chiropractic practice whenever a clinician feels a physiologic imaging test is needed for differential diagnostic purposes. Clinical thermography is a physiologic imaging technology that provides information on the normal and abnormal functioning of the sensory and sympathetic nervous systems, vascular system, musculoskeletal system, and local inflammatory processes. The procedure also provides valuable diagnostic information with regard to dermatologic, endocrine, and breast conditions.

Clinical thermography may contribute to the diagnosis and management of the patient by assisting in determining the location and degree of irritation, the type of functional disorder, and perhaps the treatment prognosis. The procedure may also aid the clinician in the evaluation of the case and in determining the most effective treatment.

Clinical breast thermography is an investigational procedure that may be performed by a doctor or technician who has been adequately trained and certified by a recognized organization. However, the interpretation of the thermal images will only be made by health care providers who are licensed to diagnose and hold credentials as board certified clinical thermographers or diplomates from a recognized organization. This is meant to insure that directed care and proper follow-up recommendations will be made available to the patient if warranted by the interpretation of the images.

## **Breast Thermography Education**

Adequate training in thermographic imaging is a necessity to insure quality image acquisition, accurate interpretation, and public safety. Minimum training as a technician (proven with core curriculum or post graduate training from the ACA, ACCT, ITS, IACT, AAT, or AAMII only) is required before breast thermography may be used in chiropractic practice. If a chiropractor is to engage in interpreting images from outside offices, the chiropractor needs to be board certified or a diplomate in thermology from the ACA, ITS, IACT, AAT, or AAMII.

A chiropractor may also image the breast as long as the images are sent out for interpretation by an appropriately trained health care provider who is licensed to diagnose and is board certified; or a chiropractic physician who holds a diplomate in thermology from the ACA, ACCT, ITS, IACT, AAT, or AAMII. This

same health care provider must have obtained training in breast thermography as part of their core curriculum in board certification or diplomate thermology courses, or obtained post-graduate training under the tutelage of a recognized expert in the field (that can be demonstrated to the satisfaction of the OBCE).

**Certified Clinical Thermographic Technicians:** (DCs or other trained persons obtaining the images) Training courses leading to certification are comprised of both formal classroom hours and practical imaging experience. Courses typically cover basic thermal imaging principles, patient management, laboratory and imaging protocols. Candidates that complete a recognized course of study, and successfully pass the required examination(s), hold credentials as certified clinical thermographic technicians.

**Certified Clinical Thermologist and Diplomates:** (DCs doing interpretation) Educational courses at this level are comprised of both formal classroom hours and practical imaging experience. The course material typically covered includes: a review of relevant anatomy and physiology, pathophysiologic processes and their relation to thermographic presentations, laboratory and imaging protocols, patient management, thermal imaging principles, image analysis and interpretation, thermographic correlation to a mammogram or MRI and a time period of practical field experience. Candidates that complete a recognized course of study, and successfully pass the required examinations, hold credentials as board certified clinical Infrared Imagers or thermologists. A typical course of study includes: a review of breast anatomy and physiology, pathophysiologic breast processes and their relation to thermographic presentations, laboratory and imaging protocols, patient management, thermal imaging principles, image analysis and interpretation, and a time period of practical field experience.

**Supervised Instruction:** In the event that the core curriculum of a board certified or diplomate course did not cover breast thermography, post-graduate training under the tutelage of a recognized expert in the field (expert in the field that can be demonstrated to the satisfaction of the OBCE) would provide the training needed for breast thermography interpretation. All the standards and practical study listed above apply.

**Certifying Organizations:** Educational courses in clinical thermography are provided through recognized organizations. Due to the many non-clinical uses of thermographic imaging, only organizations specifically founded to serve the educational needs in clinical thermography are recognized. The currently recognized training organizations are the: American Chiropractic Association, American College of Clinical Thermology, International Academy of Clinical Thermology, American Academy of Thermology, and past graduates of the American Academy of Medical Infrared Imaging (no longer in existence).

### **Equipment Guidelines**

In order to provide quality image production and accurate clinical interpretations, certain minimum equipment standards should be maintained, only FDA cleared equipment for thermography of the breast shall be used. (Note: No evidence has been presented that this equipment is actually “FDA approved”.)

### **Informed Consent**

Any chiropractic clinic providing breast thermography imaging must use the attached informed consent form. This is in addition to verbal communication with the patient to ensure their understanding of these informed consent provisions, the investigational status and that this is adjunctive to other standard diagnostic imaging or examination.

**Clinic or Entity Name:** \_\_\_\_\_

**Address:** \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Phone Number: (\_\_\_\_\_) \_\_\_\_\_

### Informed Consent \*\*\*Breast Thermal Imaging

Please **read carefully and initial your name** on the line at the end of each section.

The Oregon Board of Chiropractic Examiners has determined that breast thermography is investigational. Investigational means further study is warranted, evidence is equivocal or insufficient, the patient has to evaluate their own risk and this is not considered standard by the Chiropractic profession. Standard means taught in a chiropractic college or otherwise accepted in the chiropractic profession.

I understand that thermography of the breast is a procedure utilizing a digital thermal imaging camera to visualize and obtain an image of the infrared radiation (heat) coming from the surface of the skin. \_\_\_\_\_

I understand that Infrared Imaging of the breast is not intended as a replacement of breast mammography and that according to the current recommended protocol, clinical examination and mammogram are considered the standard breast cancer screen for women. Thermography is not a stand-alone diagnostic tool, meaning it is not approved to be used by itself for screening. \_\_\_\_\_

I understand that Thermal breast scans and mammography do not provide the same information on breast tissues and therefore provide different values on breast tissue assessment (thermography looking for physiological changes and mammography looking for anatomical changes). \_\_\_\_\_

I understand that breast thermography may be used as an adjunctive screen in addition to mammography, MRI and clinical exam to detect early stages of breast abnormalities. \_\_\_\_\_

I understand that the imaging physician and/or technician providing the Thermal Breast Scans at (clinic name) are not diagnosing or treating breast abnormalities. Follow up care relating to treatment must be done with properly trained and licensed breast specialists. \_\_\_\_\_

I understand that if by any chance, an abnormal finding is discovered on my breast scan, I will comply with any diagnostic or referral recommendation made by Dr. (name) such as following up with a breast ultrasound/mammogram and/or with a breast specialist to ensure I receive proper care. \_\_\_\_\_

I understand that I will disrobe from the waist up during the exam. My breasts will then be imaged with an electronic thermographic camera. I understand that the procedure does not use radiation or compression and does not pose any harmful effects to my body. A clinical breast examination could be necessary at the end of my imaging session and will be performed by Dr. (name) to verify any abnormal findings. \_\_\_\_\_

I understand that the results of my thermograms will be made available to my physicians and others as I so designate for further diagnosis and analysis in the overall evaluation of my breast health. \_\_\_\_\_

I have been given a Pre-Imaging instruction form to follow and I agree that I have complied with the preparation protocol prior to the procedure. \_\_\_\_\_

I also understand that this procedure is not covered by insurance and the office fee is due and payable at the time of service unless special provisions have been made with the office in advance. \_\_\_\_\_

Having understood the above and having received satisfactory answers to all questions that I may have had concerning the purpose, outcome, benefits, and risk factors of thermographic evaluation, I consent to examination by Infrared Imaging of my breasts by (clinic) \_\_\_\_\_.

Signature \_\_\_\_\_ Date \_\_\_\_\_

Print Name \_\_\_\_\_