

Secretary of State
NOTICE OF PROPOSED RULEMAKING HEARING*
A Statement of Need and Fiscal Impact accompanies this form

FILED
2-11-16 10:50 AM
ARCHIVES DIVISION
SECRETARY OF STATE

Board of Chiropractic Examiners
Agency and Division
811
Administrative Rules Chapter Number

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RULE CAPTION

Amends two current rules to add Chiropractic Assistants to the fingerprint and background check requirement

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

Hearing Date	Time	Location	Hearings Officer
3-17-16	8:30 a.m.	Morrow Crane Building, 3218 Pringle Rd SE, 2nd Fl Large Conf Room,	Jason Young DC, OBCE

RULEMAKING ACTION

Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

ADOPT:

AMEND:

811-010-0084 Fitness Determination for Licensure; State and Nationwide Criminal Background Checks

811-010-0110 Chiropractic Assistants

REPEAL:

RENUMBER: Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

AMEND AND RENUMBER: Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

Statutory Authority:

ORS 684.054, 684 100, 684.155

Other Authority:

ORS 183

Statutes Implemented:

ORS 684.054, 684 100, 684.155

RULE SUMMARY

Amends two current rules to add Chiropractic Assistants to the fingerprint and background check requirement

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

03-17-2016 Close of Hearing
Last Day (m/d/yyyy) and Time for public comment

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*The Oregon Bulletin is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation.

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811
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Amends two current rules to add Chiropractic Assistants to the fingerprint and background check requirement

Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of:

811-010-0084 Fitness Determination for Licensure; State and Nationwide Criminal Background Checks

811-010-0110 Chiropractic Assistants

Statutory Authority:

ORS 684.054, 684 100, 684.155

Other Authority:

ORS 183

Statutes Implemented:

ORS 684.054, 684 100, 684.155

Need for the Rule(s):

To amend language to clarify that chiropractic assistants fall under the current Fitness Determination rule; and to add procedural language to the Chiropractic Assistants rule

Documents Relied Upon, and where they are available:

Current OAR - available online or in OBCE office

Fiscal and Economic Impact:

No additional impact to agency

Statement of Cost of Compliance:

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):

Minor

2. Cost of compliance effect on small business (ORS 183.336):

a. Estimate the number of small business and types of businesses and industries with small businesses subject to the rule:

Approximately 1200 Doctors of Chiropractic may be affected if they are paying fingerprint fees for the applicants.

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:

Agency will absorb the cost of the Oregon State Police / FBI checks as part of the current chiropractic assistant fees.

c. Equipment, supplies, labor and increased administration required for compliance:

None

How were small businesses involved in the development of this rule?

No involvement at this time.

Administrative Rule Advisory Committee consulted?: No

If not, why?:

No major changes to one rule and procedural amendments to other.

03-17-2016 Close of Hearing

Kelly J. Beringer

kelly.beringer@oregon.gov

Last Day (m/d/yyyy) and Time
for public comment

Printed Name

Email Address

Fitness Determinations for Licensure; State and Nationwide Criminal Background Checks

811-010-0084 (1) Purpose. The purpose of this rule is to provide for the reasonable screening of subject individuals in order to determine if they have a history of criminal behavior such that they are not fit to be granted a license or **certificate**, registration, permit in occupations, or professions covered by Oregon Laws 2005, chapter 730.

(2) These rules are to be applied when evaluating the criminal history of a subject individual and conducting fitness determinations based upon such history. The fact that a subject individual is approved does not guarantee the granting of a license, **certification**, registration, or permit.

(3) "Subject individual" means a person from whom the Board may require fingerprints for the purpose of enabling the Board of Chiropractic Examiners to request a state or nationwide criminal records check. Under this chapter, subject individual means applicants for doctor of chiropractic license, applicants for chiropractic assistant certification, and any licensee under investigation as ordered by the Board.

(4) The Board may request that the Department of State Police conduct a Criminal History Check and a National Criminal History Check, using fingerprint identification, of subject individuals. The Board may conduct criminal records checks on subject individuals and any licensee/**certificate** holder under investigation through the Law Enforcement Data System maintained by the Department of State Police in accordance with rules adopted, and procedures established, by the Department of State Police. Criminal history information obtained from the Law Enforcement Data System must be handled in accordance with applicable Oregon State Police requirements in ORS chapter 181 and OAR Chapter 257, Division 15.

(5) Additional Information Required. In order to conduct an Oregon and National Criminal History Check and fitness determination, the Board may require additional information from the subject individual as necessary, such as but not limited to, proof of identity; residential history; names used while living at each residence; or additional criminal, judicial, or other background information.

(6) The Board shall determine whether an applicant is fit to be granted a license or **certification**, based on the criminal records background check, on any false statements made by the individual regarding the criminal history of the individual, on any refusal to submit or consent to a criminal records check including fingerprint identification, and any other pertinent information obtained as part of an investigation. If a subject individual is determined to be unfit, then the individual may not be granted a license or **certification**. The Board may make a fitness determination conditional upon applicant's acceptance of probation, conditions, limitations, or other restrictions upon licensure.

(7) Except as otherwise provided in section 6 in making the fitness determination the Board shall consider:

- (a) The nature of the crime;
- (b) The facts that support the conviction or pending indictment or that indicate the making of the false statement;
- (c) The relevancy, if any, of the crime or the false statement to the specific requirements of the subject individual's present or proposed position, services, employment, license, **certification** or registration; and
- (d) Intervening circumstances relevant to the responsibilities and circumstances of the position, services, employment, license, **certification**, registration or permit. Intervening circumstances include but are not limited to:

- (A) The passage of time since the commission of the crime;
 - (B) The age of the subject individual at the time of the crime;
 - (C) The likelihood of a repetition of offenses or of the commission of another crime;
 - (D) The subsequent commission of another relevant crime;
 - (E) Whether the conviction was set aside and the legal effect of setting aside the conviction; and
 - (F) A recommendation of an employer.
- (8) All background checks shall be requested to include available state and national data, unless obtaining one or the other is an acceptable alternative.
- (9) Criminal offender information is confidential. Dissemination of information received under ORS (HB 2157) is only to people with a demonstrated and legitimate need to know the information. The information is part of the investigation of an applicant, licensee and **certificate holder** and as such is confidential pursuant to ORS 676.175(1). All original fingerprint cards will be destroyed per ORS (HB 2157)
- (10) The Board will permit the subject individual for whom a fingerprint-based criminal records check was conducted to inspect the individual's own state and national criminal offender records and, if requested by the subject individual, provide the individual with a copy of the individual's own state and national criminal offender records.
- (11) The Board may consider any felony or misdemeanor conviction involving moral turpitude.
- (12) If an applicant, licensee or **certificate holder** is determined not to be fit for a license and/or **certificate**, they are entitled to a contested case process pursuant to ORS 183.413-470. Challenges to the accuracy or completeness of information provided by the Department of State Police, Federal Bureau of Investigation and agencies reporting information must be made through the Department of State Police, Federal Bureau of Investigation or reporting agency and not through the contested case process pursuant to ORS 183.
- (13) Request for Re-Evaluation Following Correction. If the subject individual successfully contests the accuracy or completeness of information provided by the Oregon State Police, the Federal Bureau of Investigation or other agency reporting information to the Board, the Board will conduct a new criminal history check and re-evaluate the criminal history upon submission of a new criminal history request form.
- (14) If the subject individual discontinues the application or fails to cooperate with the criminal history check process then the application is considered incomplete.

Statutory Auth.: ORS 684

Stats. Implemented: ORS 684.100, ORS 183

Adopted Eff. 6-20-06

Chiropractic Assistants

811-010-0110 (1) The certification period for Chiropractic Assistants begins on August 1 and ends on July 31. A 30 day grace period will follow whereupon the Chiropractic Assistant may continue to practice. Any Chiropractic Assistant who has not renewed by September 1 must cease practice.

(2) Chiropractic Assistants may be certified upon compliance with the following standards and procedures:

(a) The Chiropractic Assistant applicant shall successfully complete a Board approved training course offered by an association, college or otherwise approved person. The initial training course shall be at least twelve hours in length, of which eight hours shall be didactic training and four hours shall be practical training.

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

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

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

(b) Submit to a complete state and federal background check performed by a local law enforcement agency

(A) Applicant will be responsible for any fees required by enforcement agency for this procedure

(B) Criminal background check results must be submitted to the board prior to certification.

~~(b)~~ (c) The applicant shall complete an application form and an open book examination supplied by the Board;

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

~~(d)~~ (e) A person initially certified between March 1st and May 31st is exempt from the continuing education requirement for renewal.

(3) The training course verification form, completed application form, completed examination, and fees in the following amounts shall be submitted to the Board:

(a) A non-refundable application fee - \$50;

(b) A non-refundable examination fee - \$35; and

(c) An initial certification fee - \$50. A refund of the certification fee will only be allowed when requested within 60 days of the initial application.

(d) In circumstances beyond the applicant's control (e.g. board review of criminal history) the Board may determine to refund the fees or portion thereof.

(e) In the event the Board requires the NBCE chiropractic assistant examination in lieu of the Board's examination, the fee in subsection (b) will be waived.

(4) The Board shall maintain an incomplete application file for six months from the date the application was received; afterward, applicants will need to re-apply.

(5) The applicant shall be at least 18 years of age.

(6) The Chiropractic Assistant shall not perform electrotherapy, hydrotherapy, or physiotherapy until he or she receives a certificate from the Board.

(7) A Chiropractic Assistant shall be directly supervised by the Chiropractor at all times. The supervising Chiropractor must be on the premises.

(8) The Chiropractic Assistant scope of practice

(a) includes physiotherapy, electrotherapy and hydrotherapy, taking vitals such as height, weight, blood pressure, temperature, pulse, respiration and/or body fat percentages and other duties as described by the Board, and

(b) does not otherwise include performing physical examinations, taking initial histories, taking X-rays (unless properly licensed), interpretation of postural screening, doing manual muscle testing, or performing osseous adjustments or manipulations or other tasks as authorized by the Board.

(9) Chiropractic Assistants shall report to the Board, in writing, his/her mailing address and place of employment. Notification of a change of mailing address or place of employment must be made within 10 days of the change.

(10) On or before each June 1, the Board of Examiners shall send the renewal notice to the Chiropractic Assistant at the last known mailing address.

(11) On or before each July 31 the Chiropractic Assistant shall mail to the Board of Examiners the renewal form with a renewal fee of \$75. A certificate that is not renewed on time may not be renewed except:

(a) Upon written application and payment to the board of the renewal fee plus a delinquent fee of \$25 for renewals submitted between August 1 and August 31 of each year; or

(b) Upon written application and payment to the board of the renewal fee plus a delinquent fee of \$50 for renewals submitted on September 1 or later; and

(c) Upon submission of proof of compliance with or exemption from the requirements of ORS 684.092.

(12) A Chiropractic Assistant has up to one year following their July 31 renewal date to renew and reinstate their certificate upon meeting the provisions of (11)(a) through (c) above. After 12 months a person must restart the application process.

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

(14) The Chiropractic Assistant's certificate shall be displayed at all times in the Chiropractic Physician's office during the Chiropractic Assistant's employment.

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

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

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

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

(16) Unprofessional or dishonorable conduct is defined as: any unethical, deceptive, or deleterious conduct or practice harmful to the public; any departure from, or failure to conform

to, the minimal standards of acceptable Chiropractic Assistant 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 Assistant:

(a) Engaging in any conduct or verbal behavior with or towards a current patient that may reasonably be interpreted as sexual, seductive, sexually demeaning or romantic (also see ORS 684.100).

(b) A certificate holder shall not engage in sexual relations or have a romantic relationship with a current patient unless a consensual sexual relationship or a romantic relationship existed between them before the commencement of the Chiropractic Assistant-patient relationship.

(A) "Sexual relations" means:

(i) Sexual intercourse; or

(ii) Any touching of sexual or other intimate parts of a person or causing such person to touch the sexual or other intimate parts of the Chiropractic Assistant for the purpose of arousing or gratifying the sexual desire of either Chiropractic Assistant or patient.

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

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

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

(d) Practicing outside the scope of the practice of a Chiropractic Assistant in Oregon;

(e) Charging a patient for services not rendered;

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

(g) Directly or indirectly engaging in threatening, dishonest, or misleading fee collection techniques;

(h) Soliciting or borrowing money from patients;

(i) Possessing, obtaining, attempting to obtain, furnishing, or prescribing controlled drugs to any person, including self, except as directed by a person authorized by law to prescribe drugs; illegally using or dispensing controlled drugs;

(j) Aiding, abetting, or assisting an individual to violate any law, rule or regulation intended to guide the conduct of Chiropractic Assistants or other health care providers; or

(k) Violating the rights of privacy or confidentiality of the patient unless required by law to disclose such information;

(l) Perpetrating fraud upon patients or third party payors, relating to the practice of chiropractic;

(m) Using any controlled or illegal substance or intoxicating liquor to the extent that such use impacts the ability to safely conduct the practice of a Chiropractic Assistant;

(n) Practicing as a Chiropractic Assistant without a current Oregon certificate;

(o) Allowing another person to use one's Chiropractic Assistant certification for any purpose;

(p) Resorting to fraud, misrepresentation, or deceit in applying for or taking the certificate examination or obtaining a certificate or renewal thereof;

(q) Impersonating any applicant or acting as a proxy for the applicant in any Chiropractic Assistant certificate examination;

(r) Disclosing the contents of the certificate examination or soliciting, accepting, or compiling information regarding the contents of the examination before, during, or after its administration;

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

(t) Failing to fully cooperate with the Board during the course of an investigation, including but not limited to, waiver of confidentiality privileges, except attorney-client privilege;

(u) Claiming any academic degree not actually conferred or awarded;

(v) Disobeying a final order of the Board; and

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

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

(17) The service of the Chiropractic Assistant is the direct responsibility of the licensed Chiropractic Physician. Violations may be grounds for disciplinary action against the Chiropractic Physician under ORS 684.100(9).

Statutory Auth.: ORS 684.155

Stats. Implemented: ORS 684.054 & 684.155(c)(A)

Eff. 8/11/2014