

Sent: 5/2/2012 11:57:49 AM

Subject: [OBCE_Publication] Update on Fee-Splitting Rule and Online Advertising

Update on Fee-Splitting Rule & Online Advertising

Doctors,

Since July 2011, the OBCE has communicated (several times) that online coupon sales where the fee is split on a per patient basis between a chiropractic clinic and the advertising company violates the OAR 811-035-0015 (24) prohibitions against “splitting fees or giving or receiving a commission in the referral of patients for services.”

Since then there have been additional developments and questions.

Groupon and Living Social now offer flat-fee advertising contracts which do not violate the rule. DCs should make sure they are signing this version of any contract. These contracts may have provisions in which the advertiser holds the revenues in trust until the promotion has concluded and then deducts their flat fee from the total.

Sprig Health has web site where patients may schedule an appointment. Sprig Health is in the process of modifying their chiropractic program to come into compliance with the rule.

One online advertiser purportedly has charged a “flat fee” which is the coupon sales total. Since under this arrangement the cost to the chiropractic clinic would rise or fall depending on the per patient sales, the OBCE has determined this also violates the rule.

The Washington State Chiropractic Quality Assurance Commission is also addressing this issue. They are asking if the coupon fee-splitting programs violate their anti-rebate rule. The OBCE doesn't have jurisdiction over DCs licensed in Washington State.

Question: Is it fee splitting if the doctor's portion of the split is donated to a non-profit charity?

Answer: Yes, as the advertiser still receives a split on a per patient basis.

Question: A DC/L.Ac. asks if she can advertise on Groupon as a L.Ac.?

Answer: The OBCE would not have jurisdiction as long as chiropractic & “DC” are not referenced in the advertisement. However, caution is advised.

Question: A DC has a LMT in office; can that person advertise with a fee-splitting coupon advertiser?

Answer: If the LMT is part of the chiropractic clinic, the answer is No.

Question: A DC has a LMT in office, can that person advertise with a fee-splitting coupon advertiser, but also say that a free chiropractic exam is part of the offer, but the chiropractor gets no payment?

Answer: The answer is No.

Dave McTeague, Ex. Dir.,
Board of Chiropractic Examiners

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<http://www.oregon.gov/OBCE/index.shtml>

Sent: Monday, January 23, 2012 4:42 PM

Subject: [OBCE_Publication] Groupon - 2nd Notice - Fee Splitting

Doctors,

It has come to the OBCE's attention that a small number of chiropractic clinics may still be using Groupon type advertising programs.

If you are advertising a discounted coupon for chiropractic exam and treatment using a program which splits the coupon fee between the advertiser and the chiropractic clinic, the OBCE has determined that is fee-splitting in violation of administrative rule.

Here is the OBCE's statement issued last July (it can found on our home page under Current Topics, the 4th link down)

http://www.oregon.gov/OBCE/pdfs/OBCE_Stmt_Groupon_and_Fee_Splitting_7_21_2011.pdf

However, if the chiropractic clinic buys advertising at a flat rate and the coupon fee is not split on a per patient basis that would not be in violation.

Please share this information with your colleagues on the chance that they do not have an email registered with the Board of Chiropractic Examiners.

Dave McTeague, Executive Director
Oregon Board of Chiropractic Examiners

Sent: Monday, July 25, 2011 11:49 AM

Subject: [OBCE_Publication] OBCE Statement regarding Groupon and Fee Splitting Rule

OBCE decides not to amend fee-splitting rule
July 25, 2011

(Groupon issue)

The Oregon Board of Chiropractic Examiners (OBCE) declined to begin rulemaking to amend the prohibition on fee-splitting at their July 21st meeting at the University of Western States. This decision means Groupon type fee-splitting arrangements are still prohibited for chiropractic physicians.

The OBCE has been reviewing the issues of Groupon and similar internet or other marketing programs for several months. They had potential draft language produced by the Administrative Rules Advisory Committee along with a dissent by one of their members outlining the potential problems with the language. (Note: the Summer 2011 BackTalk quoted testimony in support of Groupon.)

Arn Strasser DC, appeared before the OBCE and made a statement in opposition to changing the rule, stating, "...The question is, what do schemes such as Groupon, where we would join restaurants, nail parlors and tanning salons, along with medical providers such as dentists and cosmetic surgeons, do to our credibility and how the public perceives us? In my opinion, offering discounted services in a fee splitting arrangement with companies such as Groupon undermines our credibility..." (Link to full statement:

http://www.oregon.gov/OBCE/pdfs/Strasser_Stmt_GroupOn_Opposed.pdf) (Note: the Summer 2011 BackTalk quoted testimony in support of Groupon.)

OBCE members were concerned that changing the rule would create the potential for problems and unintended consequences. They cited the difficulty in trying to craft a workable exemption.

The OBCE also heard that two other such marketing programs had changed their setup for health professionals from a fee-splitting arrangement to a flat fee marketing program (Living Social and Fox 12 Daily Deal). OBCE members wondered why Groupon could not do the same thing? (The question has been posed to Groupon but no answer has been received yet.) They felt it would be better if the advertisers changed their program for health professionals, instead of the OBCE amending the fee-splitting rule prohibition.

The OBCE members stated that chiropractic clinics who have utilized Groupon would not be sanctioned as previously many have clearly not understood that this is fee-splitting. However, now the profession has been informed several times that fee-splitting arrangements such as the current Groupon program violate the rule. The OBCE recommends that chiropractic physicians refrain from marketing programs that include a split fee in the referral or recruitment of patients.

The OBCE does not plan on revisiting this issue at their next meeting.

Any comments sent to the OBCE at Oregon.obce@state.or.us are shared with the board members.

OAR 811-035-0015

Unprofessional Conduct in the Chiropractic Profession

...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.

Dave McTeague, Ex. Dir.

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