

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

<u>Board of Chiropractic Examiners</u>	811
Agency and Division	Administrative Rules Chapter Number
<u>Donna Dougan</u>	(503) 373-1579
Rules Coordinator	Telephone
<u>Board of Chiropractic Examiners, 3218 Pringle Rd. SE, Suite 150, Salem, OR 97302</u>	
Address	

RULE CAPTION

Changes chiropractic assistant application fees to non-refundable and establishes a retention schedule for inactive applications.

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

Hearing Date	Time	Location	Hearings Officer
5-17-12	02:00 PM	OBCE Administrative Office, 3218 Pringle RD SE Ste 150 Salem OR 97302	Dave McTeague

Auxiliary aids for persons with disabilities are available upon request.

RULEMAKING ACTION

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

ADOPT:

AMEND:

811-010-0110

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

Other Authority:

Statutes Implemented:

ORS 684.054 (3) & ORS 684.155(c)(A)

RULE SUMMARY

Changes chiropractic assistant application fees to non-refundable and establishes a retention schedule for inactive applications.

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

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.

<u>05-17-2012 2:00 p.m.</u>	<u>Donna Dougan</u>	<u>Donna.Dougan@state.or.us</u>	<u>1-27-12 2:32p.m.</u>
Last Day (m/d/yyyy) and Time for public comment	Printed Name	Email Address	Date Filed

*The *Oregon Bulletin* is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation. Notice forms must be submitted to the Administrative Rules Unit, Oregon State Archives, 800 Summer Street NE, Salem, Oregon 97310 by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a Saturday, Sunday or legal holiday when Notice forms are accepted until 5:00 pm on the preceding workday.

ARC 923-2003

Secretary of State
STATEMENT OF NEED AND FISCAL IMPACT

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Board of Chiropractic Examiners

811

Agency and Division

Administrative Rules Chapter Number

Changes chiropractic assistant application fees to non-refundable and establishes a retention schedule for inactive applications.

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

In the Matter of:

Amends OAR 811-010-0110

Statutory Authority:

ORS 684

Other Authority:

Stats. Implemented:

ORS 684.054 (3) & ORS 684.155(c)(A)

Need for the Rule(s):

The OBCE requires the fees to be non-refundable to offset the cost of the agency's processing time for each application, regardless of application completion.

Documents Relied Upon, and where they are available:

OBCE

Fiscal and Economic Impact:

There will be a negative impact to the payee should the application be withdrawn or denied by the Board.

Statement of Cost of Compliance:

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

There will be a positive impact on the Agency for cost recovery of staff resources for processing the application.

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:

Those in the business of Chiropractic who intend to employ chiropractic assistants. Approximately 1400.

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

n/a

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

n/a

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

If not, why?:

A public notice will be sent by OBCE's public notice mailing list.

Administrative Rule Advisory Committee consulted?: Yes

Date is unspecified

05-17-2012 2:00 p.m.

Donna Dougan

Donna.Dougan@state.or.us

1-27-12 2:32 PM

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

Printed Name

Email Address

Date Filed

Chiropractic Assistants

811-010-0110 (1) Ancillary personnel authorized by ORS 684.155(c) shall be known as Chiropractic Assistants.

(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. Effective January 1, 2011, 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.

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

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

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

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

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

(d) 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 A~~ application fee - \$25;

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

(c) ~~Certification-License~~ fee - \$50. A refund of the license 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."

(f) 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 one year from the date the application was received; afterward, applicants will need to re-apply.

~~(4)-(5)~~ The applicant shall be at least 18 years of age.

~~(5)-(6)~~ The Chiropractic Assistant shall not perform electrotherapy, hydrotherapy, or physiotherapy until he or she receives a certificate from the Board.

~~(6)-(7)~~ A Chiropractic Assistant shall be directly supervised by the Chiropractor at all times. The supervising Chiropractor must be on the premises.

~~(7)-(8)~~ The 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.

~~(8)-(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.

~~(9)-(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.

~~(10)-(11)~~ On or before each August 1 the Chiropractic Assistant shall mail to the Board of Examiners the renewal form with the following:

(a) Renewal fee of \$50; and

(b) Evidence of successful completion of six hours of continuing education during the 12 months preceding. No continuing education hours may be carried over into the next renewal year.

~~(11)-(12)~~ 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).

~~(12)-(13)~~ The failure, neglect or refusal of any person holding a certificate to show compliance with subsection (10)(a) and (b) of this rule shall cause the certificate to automatically expire August 1 and the Chiropractic Assistant must reapply.

~~(13)-(14)~~ The Chiropractic Assistant's certificate shall be displayed at all times in the Chiropractic Physician's office during the Chiropractic Assistant's employment.

~~(14)-(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.

~~(15)~~ (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 or license 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.

| ~~(+6)(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