

# Oregon Board of Chiropractic Examiners

## DIVISION 15 CONSUMER PROTECTION

Proposed amendments are **BOLDED**. Proposed deletions are ~~struck out~~.

### **811-015-0002 Pre-Paid and Contracted Treatment Plans** **DRAFT 4**

1) Chiropractic physicians may accept pre-payment for services planned but not yet delivered only if they do so in such a way that it does not constitute the practice of insurance.

a) **“Insurance” means a contract whereby one undertakes to indemnify another or pay or allow a specified or ascertainable amount or benefit upon determinable risk contingencies. (ORS 731.102)**

b) **Chiropractic physicians or clinics who are certified by the Oregon Department of Insurance as Medical Retainer Plans are exempted from this section.**

c) **These plans must not be in violation of OAR 811-015-0000 (Fees).**

d) Contracts entered into after (effective date of these amendments) are limited to 90 days, but there is no limitation to additional contracts with the same patient.

~~2) The patient’s file must contain: the proposed treatment plan, the diagnosis or condition being treated, and the duration of the pre-payment plan.~~

2) If nutritional products or other hard goods including braces, supports or patient aids are to be used during the proposed treatment plan, the patient documents must state whether these items are included in the gross treatment costs or if they constitute a separate and distinct service and fee. Any additional fees must be explained to the patient in advance and noted in the chart notes.

3) The pre-paid treatment plan must include a written explanation on how the unused portion of funds are calculated or prorated should the patient complete care early or discontinue care due to the patient’s choice, doctor’s choice, moving, new injury or condition. **The written explanation must be clearly labeled “Refund Policy” and explained in plain language that is understood by the patient. The explanation must include a table of calculations that illustrates the amount of refunds or amount owed in the event of the pre-paid plan’s early termination.**

a) **In event of early termination of a pre-paid treatment plan by the patient, the maximum fee charged cannot exceed the chiropractor's usual and customary fee for the services rendered.**

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**b) In event of early termination of a pre-paid treatment plan by the chiropractic physician or clinic, the maximum fee charged cannot exceed pro-rated fees as agreed upon in the pre-paid treatment plan.**

DRAFT

# Oregon Board of Chiropractic Examiners

## DIVISION 10 GENERAL RULES AND LICENSING

Proposed amendments are **BOLDED**. Proposed deletions are struck out

### **Guide to Policy and Practice Questions**

**811-010-0093** The Board's Guide to Policy and Practice Questions, originally dated January 14, 1998, and last amended ~~September 28, 2007~~ March 21, 2013, is hereby adopted.

*Statutory Auth.: ORS 684*

*Stats. Implemented: ORS 684.010; 684.155*

*Adopted Eff. 11-30-07*

\*\* Since the Board of Chiropractic Examiners' last adopted the Policies and Practice Questions Guide, the following policies have been added to the Guide. Will the Board ADOPT the most current version of the Guide – including THESE policies and those reviewed from the BackTalk Question/Answers? The Guide was officially last amended five years ago November 2007. \*\*

“ALPHA-STIM” M.E.T. PROTOCOLS AND C.E.S.  
AURICULOTHERAPY  
BREAST THERMOGRAPHY  
CONTACT REFLEX ANALYSIS  
CRYOPROBE  
(DIRECT) SUPERVISION OF CLINIC STAFF  
ELLMAN SS PELLEVE  
ENERGY MEDICINE DEVICES  
GUA SHA  
HCG POLICY  
KINESIOTAPING METHOD  
LYME DISEASE  
MAGNETIC RESONANCE IMAGING (MRI'S)  
MERIDIAN THERAPY  
MILITARY SERVICE (AND RENEWAL)  
RECORD KEEPING  
THERAPIES, Including Massage  
X-RAY SERVICES BY CHIROPRACTIC PHYSICIAN  
ZERONA LASERS (ERCHONIA)

#### **“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)

#### **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) [This topic was revisited by the board and it confirmed that this therapy is part of the scope of chiropractic practice. \(12/17/12\)](#)

#### **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)

### **CONTACT REFLEX ANALYSIS**

Contact reflex analysis is within the scope of chiropractic practice. (4/21/94) [CRA was reviewed in 2009 and its current position as standard was not changed. \(05/21/09\)](#)

### **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)

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

The OBCE was asked if licensed chiropractic assistants could provide therapies in a business space next door to the clinic. The OBCE responded that the chiropractic assistant 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)

### **Electronic Records**

If a chiropractic physician or clinic determines to transfer original paper patient records to an electronic medium and then destroy those paper records, the following conditions must be met:

- All relevant information must be transferred. A record or memo indicating who, what -when, where and how the transfer occurred must be made.
- The records may not be altered in any significant way.
- Color coded patient records must be captured as well.
- There must be a secure and reliable backup system for all electronic patient records.

The HIPAA law requires health care providers to “maintain reasonable and appropriate administrative, technical and physical safeguards (a) to ensure confidentiality of the information, and (b) protect against (i) threats or hazards to the security of the information; and (ii) unauthorized uses or disclosures of this information.” (07/19/12)

### **ELLMAN SS PELLEVE**

This is a high frequency low temperature radio wave unit (or similar units), "utilized to tighten collagen within the skin non invasively." Although this is not a laser procedure, it may be similar to the laser treatments for cosmetic purposes. On March 18, 2010, the OBCE referred this issue to the ETSDP committee for review. Previously in September 2009, the OBCE determined a similar device, Lam Probe 4000, was not to be used. (3/18/10)

## **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 EPMX-SCIO device (which was previously evaluated and found to be unacceptable). (5/27/10)

## **GUA SHA**

Is “gua sha” or “cupping” (moxibustion) within CA scope of practice? A CA/LMT who has been trained in gua sha and cupping, asks whether these procedures are allowed under the CA scope of practice. After reading the materials provided the Board it determined unanimously, “No, this is not allowed under the CA scope; this is a practice of acupuncture.” (07/19/12)

## **HCG POLICY**

Use of HCG (Human chorionic gonadotropin) - “homeopathic” or otherwise - is outside the Oregon chiropractic scope of practice. The U.S Food and Drug Administration (FDA) and Federal Trade Commission (FTC) have taken action to remove “homeopathic” HCG weight loss products from the market. Their advisory issued December 11, 2011 states,

“The labeling for the “homeopathic” HCG products states that each product should be taken in conjunction with a very low calorie diet. There is no substantial evidence HCG increases weight loss beyond that resulting from the recommended caloric restriction. Consumers on a very low calorie diet are at increased risk for side effects including gallstone formation, electrolyte imbalance, and heart arrhythmias.

“These HCG products marketed over-the-counter are unproven to help with weight loss and are potentially dangerous even if taken as directed,” said Ilisa Bernstein, acting director of the Office of Compliance in FDA’s Center for Drug Evaluation and Research. “And a very low calorie diet should only be used under proper medical supervision.”

03/27/12

## **KINESIOTAPING METHOD**

(clarification)

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)

The Board was asked for additional clarification on the Kinesiotaping policy. “Does the board consider the two methods – ‘Kinesiotaping’ and ‘taping’ - one in the same?” Yes. The Board hasn’t distinguished a difference. And, referring to the policy’s second sentence, the question was asked, “if the DC is trained in the taping does this mean the DC needs to be trained to the extent that he holds a ‘certification’ in Kinesiotaping, or taping?” No. The training received in chiropractic college is sufficient. Other reasonable training would be acceptable also. (05/15/12)

## **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)

## **MAGNETIC RESONANCE IMAGING (MRI’S)**

Chiropractic physicians in Oregon have a broad scope of practice for diagnostic testing. This includes ordering magnetic resonance imaging (MRI) when indicated. Some entities such as hospitals or third party payers have questioned whether chiropractic physicians may order MRIs.

Chiropractors need direct access in ordering magnetic resonance imaging to establish diagnosis for key conditions presenting in their patient population that directs management of care.

Chiropractic physicians receive extensive training in this area. The training of doctors of chiropractic emphasizes the role of imaging, especially conventional radiography and magnetic resonance imaging. Chiropractic students are taught the basic physics, clinical applications, the advantages and limitations of these imaging modalities. In addition, chiropractic students are taught to interpret key bone and joint conditions as well as current imaging guidelines.

In all requests for diagnostic testing, there needs to be clinical justification (OAR 811-015-0010). (2/3/2010)

## **MERIDIAN THERAPY**

The Board reviewed this therapy and determined it may be performed as part of the Oregon chiropractic scope of practice (12/17/12)

## **MILITARY SERVICE (AND RENEWAL)**

**408.450 Duty to pay fees during military duty** states, “No person in the military or naval service of the United States, or any auxiliary corps thereof, while exercising any privilege in this state by virtue of having paid an annual license or privilege fee to any state board or commission for the right to practice a profession or engage in a trade, shall lose such privilege because of failure to pay any such fee for any

subsequent year during the period the person is in such service, unless dishonorably discharged therefrom. Upon being discharged from such service under honorable conditions and upon written application within 60 days of such discharge, every such person shall be restored to former status with respect to any such privilege without the necessity of paying the then current license fee.”

When the OBCE is made aware of a licensee's relevant military service, we will apply the above mentioned law accordingly.

As regards continuing education, requests for waivers or delay in submission will be reviewed on a case by case basis as per the OBCE's hardship policy. The OBCE requests notification of this before the end of the licensee's renewal period. (July 2011)

## **RECORD KEEPING**

A doctor contacted the Board and asked, “Is it required that I sign every dated entry even after having been gone on vacation (the relief doctor has already signed them)?” Staff asked the board for further clarification of the rule: What is your interpretation? Does the single practitioner doctor have to initial every entry, as the rule seems to say; or is it enough to indicate elsewhere in the charts that all entries are performed by the DC?

Current administrative rule states, 811-010-0005 Records states, “(1)(b) Every page of chart notes will identify the patient by name, and the clinic of origin by name and address. Each entry will be identified by day, month, year, provider of service and author of the record.”

The Board’s interpretation of this rule is that in a sole practitioner office, the entries are sufficiently identified by the name on the cover sheet, or at the top of every page, as long as there are not other people seeing and treating the patient. (07/19/12)

## **THERAPIES, Including Massage**

"All CCA provided therapies must be performed under the supervision of a chiropractic physician who must always be on premise. A CCA could provide a full body massage if the chiropractic physician prescribes it and provides instruction on how to do it.

Whatever therapy is provided by a CCA has to be justified by the results of the history, examination, and diagnosis for each chiropractic patient, as governed by the Oregon Chiropractic Practice and Utilization Guidelines and other applicable administrative rules. A CCA may not provide any therapy that is not part of chiropractic patient care." (1/25/12)

## **Webinar option**

*(under topic CA initial training)*

It was proposed to the Board that webinars be allowed as a training tool for the eight (8) hours didactic portion of the Chiropractic Assistants initial training. After considering a draft of the proposed outline/presentation, the Board approved webinars as a viable option for the training. The Board continues to deny video presentations as they want the live person to person interaction.

Any program offered for chiropractic assistant initial training must be pre-approved by the Oregon Board of Chiropractic Examiners (Board). Note: “Pre-approval” is already required with current administrative rule. The Board will ONLY consider for pre-approval a minimum eight (8) hour program which covers all modules of the



Board's required didactic training outline. These programs may be offered either in-person or by LIVE (not pre-recorded) webinar. This policy is drafted to better implement administrative rule 811-010-0110(2)(a)(i) through (iii).

When a program for approval is a webinar, it must meet the additional following criteria:

1. The proposed program must include technology which enables participants and the instructor to ASK and ANSWER questions in real time
2. Must offer some evaluation after EACH module of OBCE's required outline; the Board requires a minimum of 4 questions be asked
3. The sponsor/program must be able to demonstrate that interaction on the part of participants is required throughout the presentation. (for example: webcams, question/answer, etc.)
4. Answers to survey questions must be recorded and made available to the Board, if requested for audit purposes.
5. The webinar software and/or vendor must be able to record the ACTUAL time each participant spends "in" the webinar.
6. All webinar sponsors/programs must provide timely evidence of attendance after each full (minimum eight hours) program is completed. This report will include: Actual time each participant spends in the webinar, Each participants name and e-mail address, Evidence of participation for each attendee (questions asked, answers to poll questions, etc.)

The board reserves the right to revoke approval for any training vendor that does not comply with the guidelines listed above at any time. It also reserves the right to not accept the training of Chiropractic Assistant applicants who enroll in webinar training but there is insufficient evidence in the opinion of the Board to conclude that they attentively participated in such training by an approved vendor. (08/16/12)

### **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.

### **ZERONA LASERS (ERCHONIA)**

(and other similar lasers)

The Oregon Board of Chiropractic Examiners reviewed this ETSDP application at their July 15, 2010 meeting. They did not change their earlier position and this is still under review. (The OBCE has previously determined that cosmetic laser procedures are outside the scope of practice.) Those Oregon chiropractic physicians with these devices may continue to treat existing patients but may not advertise or accept new patients.

The Board discussed whether Zerona laser treatments for fat reduction had a therapeutic component that could be used as part of a comprehensive weight management and chiropractic wellness program. They also discussed that advertising should emphasize the health benefits of this as adjunctive to other weight and health maintenance approaches.

The Board found a lack of clinical research that measures possible long-term therapeutic benefits, noting that existing studies study patients for three weeks post treatment. The Board will consider approving this as investigational provided these patients are part of a long term study.

The Board requested proponents to propose a long term study to follow patients to ascertain whether are any therapeutic health benefits for periods of six months to two years. The Board suggested the UWS research department might assist with this. David Corll DC, who made the ETSDP application, said he (and proponents) would return to the OBCE with a proposal for a longer term study and parameters for accepting new patients for this purpose.

The July 15, 2010 OBCE public meeting minutes include a full discussion of this topic. (7/15/2010)

Board members,

Please review the following policies and **determine whether you DO or DO NOT want to add them to the Policy & Practice Question Guide**

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**ADVERTISING IN YELLOW PAGES**

Question: May a chiropractor place their names in the medical and osteopathic doctor section in the Yellow Pages (in addition to the chiropractic section)? The salesman said that’s one way to obtain additional advertising.

Answer: That is likely misleading advertising in violation of the OBCE advertising rule, OAR 811-015-0005.

**ALLERGIES**

Question: Can DCs treat or address allergies holistically?

Answer: Yes, DCs have a broad scope of practice.

### **BAX 3000 AND SIMILAR DEVICES**

The BAX 3000 is marketed as device to diagnose and treat allergies and food sensitivities. The device was reviewed by the OBCE's ETSDP Committee and on January 17, 2013, this policy was adopted by the OBCE in accordance with the ETSDP rule.

The BAX 3000 and similar devices are disapproved (outside the scope) as a diagnostic procedure.

As a treatment modality, the BAX 3000 and similar devices are considered Investigational with Moderate Risk for use with chiropractic patients. This rating requires a written Informed Consent statement signed by the patient. This rating also recommends the chiropractic physician participate in or conduct a formal investigation of the procedure.

The written informed consent must at a minimum address or include:

- The risks of ingesting food or substances which may provoke an anaphylaxis reaction.
- A statement that the use of this treatment could cause an exacerbation.
- An acknowledgement that there is currently a lack of peer reviewed evidence and other evidence such as case studies.
- If the patient is to be part of a research or case study, consents to that participation.
- An understanding that this treatment is considered 'Investigational with Moderate Risk' by the Oregon Board of Chiropractic Examiners.
- This device/procedure is not used to diagnose allergies or other conditions and that other procedures are used for that purpose.

Chiropractic physicians using the BAX 3000 or similar devices must adhere to the OBCE's advertising rules and policies. They must refrain from making advertising claims which cannot be supported. (3/21/13)

### **CHIROPRACTIC ASSISTANT LICENSES**

Question: I am a Chiropractor who practices in Taiwan which recognizes United States Chiropractic licenses. However, I have two chiropractic assistants who require recognition. If it is possible, can the State of Oregon issue a chiropractic assistant license for the **chiropractic assistants here in Taiwan?**

Answer: No. A chiropractic assistant certificate is only valid in the State of Oregon and under the supervision of an Oregon licensed chiropractor.

### **COLLOIDAL SILVER; SILVER**

Previous OBCE policy stated, "Licensed chiropractors may create their **own colloidal silver** and sell it to their patients..." As of January 17, 2013, this is revised due to concerns that the oral ingestion of silver runs the risk of causing argyria, a serious skin condition, and other less common health problems.

**New Policy:** Chiropractic physicians may not create their own colloidal silver for ingestion purposes and/or retail this to their patients from this point forward. (i.e. outside scope as per the ETSDP rule). Chiropractic physicians creating their own solutions may only use these for topical use.

Both the National Center for Complementary and Alternative Medicine and the Food and Drug Administration have issued strong warnings and alerts that focus on oral ingestion of silver compounds.

Topical uses of silver as taught and utilized in chiropractic colleges is within the Oregon chiropractic scope of practice. Even given the potential for absorption of silver across the mucous membranes, the occasional use of intranasal Argylol applications for sinusitis would not result in a dose that remotely approximates the chronic oral Reference Dose (RfD – 5 mg/kg of body weight/day) of silver established by the EPA as a risk for developing argyria.

Also allowed is multi-mineral formulations which include small doses of colloidal silver below the allowable EPA limits. (Jan 2013)

### **COLONIC THERAPY**

Question: May a chiropractor write a prescription/referral for **colonic therapy**?

Answer: yes, this used to be taught at WSCC and is still considered within the Oregon DC scope of practice

### **CPAP MACHINE, ORDERING**

Question: Is ordering a **CPAP** machine and/or a sleep study be within the DC's scope of practice?

Answer: Yes, whether insurance will pay or not is another question.

### **ELECTRONIC SIGNATURES**

Question: A chiropractic clinic keeps daily charts electronically which indicates the provider of the services. Is it necessary for a chiropractic physician to print out and personally sign each daily chart note?

Answer: No, it is sufficient to keep that information electronically as long as the provisions of OAR 811-015-0005 (1) (b) are met, "Every page of chart notes will identify the patient by name, and the clinic of origin by name and address. Each entry will be identified by day, month, year, provider of service and author of the record."

### **ELECTRONIC SIGNATURE ON CHARTS**

Question (from a DC): I type each day's notes at the time of service into my computer. When I finish out a chart note each day, I **initial them with a computer generated note**. This is not an actual written signature, but they are my initials and signify who made the note. Would this satisfy the requirement to sign each chart note entry?

Answer: Yes. You can use typed initials or signatures for computer generated chart notes.

### **EMPLOYING DC**

(ADD TO)

Question: (from an acupuncturist clinic owner) We currently have 2 independent DCs working in our space. We have been advised to change our business model and **bring the DCs onto payroll** rather than having them as independent contractors. Are there any restrictions in terms of hiring DCs. Could the business also hire a CA, and have the DC supervise?

Answer: Yes, DCs may be hired as employees as they may also employ other health professionals. As the independent contractor situation is fraught with issues, having employees is probably a safer way to operate. We do have a requirement that chiropractic clinics must be majority owned and controlled by licensed Oregon chiropractors, but that same rule allows for multi-disciplinary (Oregon health licensee) clinics as well. What we don't want is non-health care or corporate controlled practice of chiropractic health care. However, it is the DC's responsibility to be part of a clinic that is compliant with our laws and rules, including the Oregon Doctor's Title Act, which applies to L.Ac.'s as well. The clinic can hire a chiropractic assistant as long as the DC is on site to supervise any practice as a CA. A complete explanation of our chiropractic assistant rules and policies can be found on the OBCE web page.

### **EMPLOYING NATUROPATH (OTHER HEALTH PROFESSIONAL)**

Question (from a chiropractic clinic manager): We have been approached by a **Naturopath who would like to work for us** in our clinic. Is it possible to bill under our tax ID # for a Naturopath?

Answer: In 2006 the OBCE adopted the following rule: OAR 811-010-0130, Other Licensed Health Care Providers. A chiropractic business entity or chiropractic physician, in accordance with decades long accepted scope of practice, may employ or contract for the services of other health care providers as part of their chiropractic practice for the purpose of providing care to patients, to the extent this does not conflict with other applicable state or federal laws. Other health care providers may include, but are not limited to, licensed massage therapists, physical therapists, athletic trainers, nurses, acupuncturists, naturopathic physicians, and physicians licensed under ORS 677.

The OBCE has no issue with this, but we don't claim to be the authoritative source for all billing issues.

### **EPIPEN**

Question: May chiropractors in Oregon administer Epipen to a person who is suffering from anaphylactic shock and unable to inject the Epipen by him/herself?

Answer: Yes. In 2007 OBCE sponsored legislation which clarified in ORS 684.025 that chiropractic physicians may provide emergency first aid.

### **FEE SPLITTING**

(ADD TO)

Question: (from a DC) I have received a solicitation as well as phone calls from a company in New York (ChiroAppointment.com). They claim to have names of patient's who are interested in Chiropractic care. They charge \$40 per referral. Is this a violation?

Answer: This is most definitely a violation of the **fee splitting rule**, OAR 811-035-0015 (24). See the article in the Summer 2009 BackTalk.

### **HOMEOPATHICS**

Regarding Over-the-Counter (OTC) homeopathic products (prepackaged for use by the consumer)

Question: May the DC give the patient a dose from that vial? Answer: Yes.

Question: Send the patient home with a dose from that vial? Answer: Yes.

Question: Place a pellet of the over-the-counter remedy in a vial with water to be administered to an infant? Answer: Yes.

Question: - Or, must I sell them the entire vial of the remedy? Answer: No.

### **INSURANCE – PIP OR HEALTH?**

Question: (from a chiropractic clinic manager) A patient who was in a car accident wants us to bill her regular health insurance instead of her auto PIP insurance. Is this acceptable?

Answer: No, ORS 742.526 states that the auto PIP insurance is primary.

### **LASER THERAPY**

(ADD TO Existing policy as a subsection)

Question: Is it within the scope of practice for a Doctor of Chiropractic in the state of Oregon to treat toenail fungus with laser therapy?

Answer: Yes, as this is for treatment of a condition. Previous legal advice has advised the OBCE that use of lasers by chiropractic physicians for strictly cosmetic purposes is not within the chiropractic scope of practice, an example of this would be hair removal.

### **MAINTAIN PERSONAL IDENTIFIERS (SSN OR DOB)**

Question: Is there a requirement to obtain and keep a patient's specific date of birth and their social security number? The concern is about possible identify theft if the information was stolen.

Answer: There is no specific OBCE rule or policy which requires this.

### **MASSAGE, BY CAS**

Question: May a certified chiropractic assistant (CCA) give a one-hour relaxation massage to a patient of the attending DC, if the DC does not actually enter the room during the one hour session?"

Answer: The Board's policy is as follows: "All CCA provided therapies must be performed under the supervision of a chiropractic physician who must always be on premise. A CCA could provide a full body massage if the chiropractic physician prescribes it and provides instruction on how to do it. Whatever therapy is provided by a CCA has to be justified by the results of the history, examination, and diagnosis for each chiropractic patient, as governed by the Oregon Chiropractic Practice and Utilization Guidelines and other applicable administrative rules. A CCA may not provide any therapy that is not part of chiropractic patient care."

### **MASSAGE, OVERSIGHT REQUIREMENTS**

Question: Does this mean the supervising chiropractic physician should be entering the treatment room periodically or seeing the patient during the same appointment for massage therapy (performed by the CCA)?

Answer: No, the OBCE's policy doesn't say that, although it may be advisable as regards the particular patient's needs. We would presume there is other contact between the doctor and patient.

If a chiropractic clinic decides to have CCAs provide full body massages without having a meaningful patient relationship, the OBCE appreciates the concerns that would raise. That said, massage can be an important part of a chiropractic wellness program. Abuses of this privilege could lead to additional OBCE rulemaking mandating additional training for CCAs who provide full body massages or limiting their scope in this area.

### **MIGRAINE HEADACHES**

Question: Is treatment of **migraine headaches** within the Oregon chiropractic scope of practice?

Answer: Yes, absolutely.

### **MYOFASCIAL RELEASE**

Myofascial release (MR) may not be performed by chiropractic assistants. A CA is not trained adequately to perform myofascial release. MR requires detailed knowledge of anatomy and an understanding of fascial planes and referral patterns. Often MR is accompanied with pre and post testing of range of motion and depending on the test results a different area is addressed to fully address the condition. MR is part of massage therapy and may be performed by a licensed massage therapist. (3/21/13)

### **NUTRITIONAL SUPPLEMENTS**

Question: May a chiropractic clinic obtain **nutritional supplements** from a multilevel marketing company?

Answer: DCs may obtain their nutritional supplements from any retail or wholesale source. So the answer is a qualified yes. However, engaging in multi-level marketing to patients is a different matter. If a chiropractic physician were to recruit patients to sell product and thus earn a commission, that could be in violation of the Board's rule on fee-splitting (OAR 811-0035-1015 (24)). If the DC merely obtains and retails the product to patients, that is not multi-level marketing or fee-splitting.

### **OXYGEN, HYPERBARIC OXYGEN THERAPY**

Question: (from an insurance claims rep.) Are chiropractors allowed to bill/perform CPT 99183 in the state of Oregon (physician attendance of hyperbaric oxygen therapy) ?

Answer: What she is really asking is hyperbaric oxygen therapy within the Oregon chiropractic scope of practice? The answer is Yes, as long as this utilizes concentrated oxygen, which is what we understand hyperbaric oxygen therapy to be.

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)

### **PAP SMEARS**

Question (from a medical testing service): May Oregon chiropractors order, collect and receive medical laboratory test results **for pap smears**?

Answer: Yes. DCs in Oregon have a very broad scope of practice in the area of diagnostics. They are also trained in ob-gyn and female health issues in chiropractic college.

### **PRESCRIPTIONS, RECOMMENDATION TO STOP USE**

Question: May a chiropractor **tell a patient with diffuse muscular pain to stop taking Lipitor?**



Answer: It could be interpreted to be out of scope to do that bluntly as it could be considered the practice of medicine. It would be appropriate to share information and concerns with the patient (which the DC did). And/or the DC should share his concerns with the prescribing doctor since they are co-treating this patient.

ORS 684.015 specifically proscribes DCs from administering or writing prescriptions for medications. ORS 684.035 Chapter not applicable to other methods of healing, says, "Nothing in this chapter shall be construed to interfere with any other method or science of healing in this state."

### **QUANTITATIVE FUNCTIONAL CAPACITY EVALUATIONS (QFCE).**

QFCEs are not within the chiropractic assistant scope of practice. The QFCE requires the doctor's clinical judgment for evaluation and performance. CAs do not have the required training for this. The board also determined that QFCEs may not be performed by a Certified Strength and Conditioning Specialist (CSCS) under the OBCE's "Any Trained Person" policy, thus a CSCS may not perform this as part of the chiropractic clinic's services in or out of the clinic. The QFCE has to be performed by the chiropractic physician (or other licensed health provider within their scope of practice). (3/21/13)

### **TESTIMONIALS**

Question: I have been reading your guide on testimonials and I wanted to clarify what we are considering. We would like to film our patients, without a script about their experience with their problem, our office, our treatment, and their results. We are happy to put any disclaimer that is deemed important by the board, but feel that testimonials are extremely important to marketing chiropractic. I have noticed that most chiropractic websites have testimonials. Please advise if it is ok to use honest, unscripted patient reports on our website.

Answer: You're referring to the Federal Trade Commission's guide which is found on the OBCE's website. The OBCE doesn't have any rules prohibiting testimonials. It's probably best to obtain a written permission statement from any patients who provide testimonials. There is a rule which says advertising must not be deceptive or misleading.

### **TRAVEL TO TREAT**

Question (from an East Coast DC): The doctor is coming to Oregon with a Trailblazer player who is his patient. Can he treat his patient while in Oregon?

Answer: Yes, under the **Travel to Treat** law for up to 15 days for a specific cultural, educational or sporting event.

I didn't think the following policy was Guide worthy considering they are in the rule??? kjb

### **Transfer of Patient Files**

Question: A chiropractor is purchasing another clinic. Is it necessary for him to get a written consent for the seller to pass on the patient file and information to me, the buyer, from the seller's patients? In other words, do the existing patients need to give permission to transfer their health information to me?

Answer: Not in this case. This situation is covered in the OBCE Records rule (OAR 811-015-0005 (5), which states, "The responsibility for maintaining original patient records may be transferred to

another chiropractic business entity or to another chiropractic physician as part of a business ownership transfer transaction.”