



Oregon

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February 22, 2012

House Health Committee
Informational Hearing



Board of Chiropractic Examiners and Independent Medical Exams (IME)

Dave McTeague, Executive Director

Daniel Cote DC, Vice-President, OBCE

Co-Chairs Greenlick, Thompson, members of the committee,

"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."

Confidentiality

ORS 676.175 outlines confidentiality requirements for health professional licensing boards. We are not allowed to address complaints pertaining to any specific licensee where there has not been a vote for disciplinary action, unless certain conditions have been met.

Our case closed letters to respondents and complainants always include this language: *"As a result of Oregon law and the Case Closed determination, the existence of this complaint and this letter is confidential. It is not subject to public information requests unless a requesting party makes a showing of clear and convincing evidence that the public interest in disclosure outweighs other interests in nondisclosure."*

ORS 676.176 (5)(a) provides that a health professional regulatory board shall publicly disclose a notice of intent to impose a disciplinary sanction and the resulting final order. The board may not publicly disclose the underlying investigation documents.

Any references we make today to specific cases in response to questions will of necessity rely on public documents.

Overview

Independent Medical Examinations (IMEs) are most often requested by insurance companies to evaluate the chiropractic care for patients, typically those who are injured in a motor vehicle accident.

IMEs are a controversial topic in the chiropractic profession. Our office regularly receives telephone calls from chiropractors or patients upset with results of those reviews. While they may file a complaint with us, we don't encourage this as the issues often devolve to a difference in clinical opinion between the examining doctor and the treating doctor.

The Board recognizes that DCs performing IMEs or chart reviews are practicing chiropractic and they do have a responsibility to the patient to perform a fair and unbiased review. All DCs are held to the same practice standards and rules. (See OAR 811-015-0010, Clinical Justification & OBCE IME policy statement)

The number of DCs (doctors of chiropractic) who perform IMEs is relatively small and self selecting. There are an even smaller number who perform quite a number of these examinations.

A full exploration of IME issues would also need the input of patients, treating doctors and the insurance companies who request them.

OBCE Complaint Statistics

Since 2001 the Board has addressed over 950 complaints and cases of various kinds, however, just 28 or 3% pertain specifically to IMEs. 71% (21) of these complaints were filed by patients and 21% (7) by other DCs.

Most of those complaints were reviewed and closed without formal board action. There are three instances (in ten years) where the Board issued a Notice of Proposed Disciplinary Action. Two of those cases were resolved with a non-disciplinary agreement between the Board and the respondent doctor. (One Stipulated Agreement and one Agreement of Voluntary Cooperation).

In both cases the respondent doctor had the option to exercise their full due process rights to a contested case hearing before an impartial administrative law judge, but chose not to.

In both of these cases the Board and respondent doctor agreed to disagree.

OBCE Complaint Process

When the OBCE receives a complaint, the complaint is summarized and the doctor is requested to provide a written response along with relevant documents. The resulting complaint file is provided to the Board for their next meeting.

If the Board determines more investigation is needed they may refer the complaint to the seven-member Peer Review Committee. The Peer Review Committee typically conducts an in-person

interview and submits a written report back to the Board. The letter to the respondent informs them of the purpose of the peer review and that they may bring an attorney if they wish. Or the Board may contract for other outside chiropractic professional expertise as needed.

Contested Case Process

Following executive session discussion, when the Board alleges violations have occurred they vote in public session to issue a Notice of Proposed Disciplinary Action. The Notice summarizes the allegations and provides hearing rights. The respondent has 30 days in which to respond and request a contested case hearing, which they do in most cases. They are also provided with a full explanation of their contested case rights and procedures.

What may happen next is requests for discovery, discussion between the parties (often between legal counsel), and further discussion with the Board. Most proceedings are resolved with a negotiated settlement in the form of a Stipulated Final Order. Others may be resolved with an Agreement of Voluntary Cooperation, which is non-disciplinary.

Some cases do go to hearing before an impartial Administrative Law Judge (ALJ). At hearing both sides present evidence, call and cross examine witnesses. The ALJ then writes a further proposed order. The Board can only modify that order based on a strict set of parameters and relying upon the formal record of evidence developed at hearing.

Attachments:

- A) ORS 676.175
- B) OAR 811-015-0010, Clinical Justification rule
- C) OBCE IME policy statement
- D) Complaint Statistics Summary 2001 to present
- E) Complaint Process Explanation
- F) Contested Case Rights and Procedures

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**Confidentiality Statutes
2011**

PROCESSING OF COMPLAINTS AGAINST HEALTH PROFESSIONALS

676.160 Definitions for ORS 676.165 to 676.180. As used in ORS 676.165 to 676.180, “health professional regulatory board” means the:

- (1) State Board of Examiners for Speech-Language Pathology and Audiology;
- (2) State Board of Chiropractic Examiners;
- (3) State Board of Licensed Social Workers;
- (4) Oregon Board of Licensed Professional Counselors and Therapists;
- (5) Oregon Board of Dentistry;
- (6) Board of Licensed Dietitians;
- (7) State Board of Massage Therapists;
- (8) State Mortuary and Cemetery Board;
- (9) Oregon Board of Naturopathic Medicine;
- (10) Oregon State Board of Nursing;
- (11) Nursing Home Administrators Board;
- (12) Oregon Board of Optometry;
- (13) State Board of Pharmacy;
- (14) Oregon Medical Board;
- (15) Occupational Therapy Licensing Board;
- (16) Physical Therapist Licensing Board;
- (17) State Board of Psychologist Examiners;
- (18) Board of Medical Imaging;
- (19) Oregon State Veterinary Medical Examining Board; and
- (20) Oregon Health Authority, to the extent that the authority licenses emergency medical services providers. [1997 c.791 §1; 1999 c.537 §4; 2001 c.274 §4; 2009 c.43 §9; 2009 c.442 §44; 2009 c.595 §1051; 2009 c.768 §33; 2009 c.833 §25; 2011 c.630 §22; 2011 c.703 §45]

676.165 Complaint investigation. (1) When a health professional regulatory board or the Oregon Health Licensing Agency receives a complaint by any person against a licensee, applicant or other person alleged to be practicing in violation of law, the board or agency shall assign one or more persons to act as investigator of the complaint.

(2) The investigator shall collect evidence and interview witnesses and shall make a report to the board or agency. The investigator shall have all investigatory powers possessed by the board or agency.

(3) The report to the board or agency shall describe the evidence gathered, the results of witness interviews and any other information considered in preparing the report of the investigator. The investigator shall consider, and include in the report, any disciplinary history with the board or agency of the licensee, applicant or other person alleged to be practicing in violation of law.

(4) The investigator shall make the report to the board or agency not later than 120 days after the board or agency receives the complaint. However, the board or agency may extend the time

Attachment A

for making the report by up to 30 days for just cause. The board or agency may grant more than one extension of time.

(5) Investigatory information obtained by an investigator and the report issued by the investigator shall be exempt from public disclosure.

(6) When a health professional regulatory board reviews the investigatory information and report, the public members of the board must be actively involved. [1997 c.791 §5; 2009 c.756 §5]

676.170 Immunity of information providers. A person who reports or supplies information in good faith to a health professional regulatory board or to a committee reporting to a health professional regulatory board shall be immune from an action for civil damages as a result thereof. [1997 c.791 §4]

676.175 Complaints and investigations confidential; exceptions; fees. (1) A health professional regulatory board shall keep confidential and not disclose to the public any information obtained by the board as part of an investigation of a licensee or applicant, including complaints concerning licensee or applicant conduct and information permitting the identification of complainants, licensees or applicants. However, the board may disclose information obtained in the course of an investigation of a licensee or applicant to the extent necessary to conduct a full and proper investigation.

(2) Notwithstanding subsection (1) of this section, if a health professional regulatory board votes not to issue a notice of intent to impose a disciplinary sanction:

(a) The board shall disclose information obtained as part of an investigation of an applicant or licensee if the person requesting the information demonstrates by clear and convincing evidence that the public interest in disclosure outweighs other interests in nondisclosure, including but not limited to the public interest in nondisclosure.

(b) The board may disclose to a complainant a written summary of information obtained as part of an investigation of an applicant or licensee resulting from the complaint to the extent the board determines necessary to explain the reasons for the board's decision. An applicant or licensee may review and obtain a copy of any written summary of information disclosed to a complainant by the board after the board has deleted any information that could reasonably be used to identify the complainant.

(3) If a health professional regulatory board votes to issue a notice of intent to impose a disciplinary sanction, upon written request by the licensee or applicant, the board shall disclose to the licensee or applicant all information obtained by the board in the investigation of the allegations in the notice except:

(a) Information that is privileged or confidential under a law other than this section.

(b) Information that would permit the identification of any person who provided information that led to the filing of the notice and who will not provide testimony at a hearing arising out of the investigation.

(c) Information that would permit the identification of any person as a person who made a complaint to the board about a licensee or applicant.

(d) Reports of expert witnesses.

(4) Information disclosed to a licensee or applicant under subsection (3) of this section may

Attachment A

be further disclosed by the licensee or applicant only to the extent necessary to prepare for a hearing on the notice of intent to impose a disciplinary sanction.

(5)(a) A health professional regulatory board shall disclose:

(A) A notice of intent to impose a disciplinary sanction against a licensee or applicant that has been issued by vote of the board;

(B) A final order that results from the board's notice of intent to impose a disciplinary sanction;

(C) An emergency suspension order;

(D) A consent order or stipulated agreement that involves licensee or applicant conduct; and

(E) Information to further an investigation into board conduct under ORS 192.685.

(b) A health professional regulatory board may make the information required to be disclosed under paragraph (a)(A) to (D) of this subsection available in electronic form, accessible by use of a personal computer or similar technology that provides direct electronic access to the information.

(6) If a notice of intent to impose a disciplinary sanction has been issued by vote of a health professional regulatory board, a final order that results from the board's notice of intent to impose a disciplinary sanction, an emergency suspension order or a consent order or stipulated agreement that involves licensee or applicant conduct shall summarize the factual basis for the board's disposition of the matter.

(7) A health professional regulatory board record or order, or any part thereof, obtained as part of or resulting from an investigation, contested case proceeding, consent order or stipulated agreement, is not admissible as evidence and may not preclude an issue or claim in any civil proceeding except in a proceeding between the board and the licensee or applicant as otherwise allowed by law.

(8)(a) Notwithstanding subsection (1) of this section, it is not disclosure to the public for a board to permit other public officials and members of the press to attend executive sessions where information obtained as part of an investigation is discussed. Public officials and members of the press attending such executive sessions shall not disclose information obtained as part of an investigation to any other member of the public.

(b) For purposes of this subsection, "public official" means a member or member-elect, or any member of the staff or an employee, of a public entity as defined by ORS 676.177.

(9) A health professional regulatory board may establish fees reasonably calculated to reimburse the actual cost of disclosing information to licensees or applicants as required by subsection (3) of this section. [1997 c.791 §2; 1999 c.751 §3; 2005 c.801 §1]

676.177 Disclosure of confidential information to another public entity; criteria. (1)

Notwithstanding any other provision of ORS 676.165 to 676.180, a health professional regulatory board, upon a determination by the board that it possesses otherwise confidential information that reasonably relates to the regulatory or enforcement function of another public entity, may disclose that information to the other public entity.

(2) Any public entity that receives information pursuant to subsection (1) of this section shall agree to take all reasonable steps to maintain the confidentiality of the information, except that the public entity may use or disclose the information to the extent necessary to carry out the regulatory or enforcement functions of the public entity.

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(3) For purposes of this section, "public entity" means:

(a) A board or agency of this state, or a board or agency of another state with regulatory or enforcement functions similar to the functions of a health professional regulatory board of this state;

(b) A district attorney;

(c) The Department of Justice;

(d) A state or local public body of this state that licenses, franchises or provides emergency medical services; or

(e) A law enforcement agency of this state, another state or the federal government. [1999 c.751 §2]

676.180 Notice prior to disclosure. If a health professional regulatory board intends to disclose a record pursuant to ORS 676.175 (2), the board shall provide the licensee or applicant seven days' prior written notice by first class mail. The notice shall describe the record that the board intends to disclose in sufficient detail to permit the licensee or applicant to know the contents of the record. In any subsequent action for injunctive or declaratory relief, the burden shall be on the person seeking disclosure to demonstrate by clear and convincing evidence that the public interest in disclosure outweighs other interests in nondisclosure, including but not limited to the public interest in nondisclosure. [1997 c.791 §3]

(Prior to 2003, there rule referred to Excessive Treatment only. That rule was changed and incorporated in to the Clinical Justification Rule. This way all practicing DCs, including examining or IME doctors are held to the same standard of care.)

811-015-0010

Clinical Justification

- (1) Clinical rationale, within accepted standards and understood by a group of peers, must be shown for all opinions, diagnostic and therapeutic procedures.
- (2) Accepted standards mean skills and treatment which are recognized as being reasonable, prudent and acceptable under similar conditions and circumstances.
- (3) All initial examinations and subsequent re-examinations performed by a chiropractor to determine the need for chiropractic treatment of neuro-musculoskeletal conditions shall include a functional chiropractic analysis. Some combination of the following PARTS exam constitutes a functional chiropractic analysis:

P Location, quality, and intensity of pain or tenderness produced by palpation and pressure over specific structures and soft tissues;

A Asymmetry of sectional or segmental components identified by static palpation;

R The decrease or loss of specific movements (active, passive, and accessory);

T Tone, texture, and temperature change in specific soft tissues identified through palpation;

S Use of special tests or procedures.
- (4) Chiropractic physicians shall treat their patients as often as necessary to insure favorable progress. Evidence based outcomes management shall determine whether the frequency and duration of curative chiropractic treatment is, has been, or continues to be necessary. Outcomes management shall include both subjective or patient-driven information as well as objective provider-driven information. In addition, treatment of neuro-musculoskeletal conditions outside of the Oregon Practices and Utilization Guidelines -- NMS Volume I, Chapter 5, may be considered contrary to accepted standards. Chiropractic physicians treating outside of the Practices and Utilization Guidelines -- NMS Volume I, Chapter 5, bear the burden of proof to show that the treatment, or lack thereof, is clinically justified.
- (5) Copies of any independent examination report must be made available to the patient, the patient's attorney, the treating doctor and the attending physician at the time the report is made available to the initial requesting party.

Stat. Auth.: ORS 684

Stats Implemented: ORS 684.155

Hist.: 2CE 1-1978, f. 6-16-78, ef. 7-1-78; CE 1-1995, f. & cert. ef. 10-30-95; BCE 2-2003, f. & cert. ef. 12-11-03; BCE 1-2005, f. 1-28-04, cert. ef. 2-1-05; BCE 1-2007, f. & cert. ef. 11-30-07

Excerpt from the OBCE Guide to Policy and Practice Questions
http://www.oregon.gov/OBCE/laws_guidepolicy.shtml

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.
- (This policy in its entirety was updated 7/18/06)

Attachment D

Complaints Filed with the OBCE 2001 to Present

Advertising	59	6%
Billing	92	10%
Chart Notes	26	3%
Child Support	4	0%
Continuing Education	22	2%
Excessive Treatment	11	1%
Fail to pay tax	6	1%
Fraud	6	1%
IME*	28	3%
Licensing	86	9%
Misc	74	8%
Practice w/o License	41	4%
Failure to Release Records	56	6%
Sex Misconduct/Boundaries	85	9%
Treatment	135	14%
Treatment/Billing	96	10%
Unprofessional Conduct	127	13%
X-ray	4	0%
	957	100%

Source: OBCE Complaint Database: 1/1/2001 to 1/15/2012

Source of IME Complaints

Patients	20	71%
Doctors of		
Chiropractic	6	21%
Attorneys	2	7%
Total	28	1

*Independent Medical Examinations (IMEs), usually conducted at the request of an insurance company as per a claimant's auto insurance policy. Paper reviews (or MFRs-Medical File Reviews) are similar in intent and purpose to an IME and thus included in this category.

Attachment D

IME Complaint Statistics

2001 to Present

Closed: No action	12	(Two included letters of concern)
Insufficient Evidence	6	
No Statutory Violation	3	
Case Closed		
Agreement of Voluntary Compliance (AVC)	4	Dr. Freedland: One order resolving four complaints.
Stipulated Agreement (similar to AVC)	1	Dr. Duncan
Notice of Proposed Disciplinary Action	1	Dr. Hart: has requested a contested case hearing.
Other pending open complaints	1	
	28	

The above mentioned AVCs are board actions, following Notice of Proposed Disciplinary Action. A contested case hearing was requested. In lieu of hearing, the OBCCE and respondent doctors reached a negotiated settlement for an Agreement of Voluntary Cooperation in one case and Stipulated Agreement in the other case. Both agreements are Non-Disciplinary. These are public documents as per ORS 676. A Notice of Proposed Disciplinary Action is also a public document. Information about closed complaints and pending open complaints is confidential.

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Public Protection

Complaint Process

IF you have knowledge of a potential or actual violation of Oregon law, administrative rule, or doctor-patient relationship by a Doctor of Chiropractic or a Certified Chiropractic Assistant, you should contact the Oregon Board of Chiropractic Examiners (OBCE) and request a written complaint form. You are also welcome to call if you have any questions. To a large degree the OBCE's ability to "protect the public health and safety" is dependent upon the willingness of people to contact this agency. You are welcome to call the OBCE's investigator at 503-373-1615.

The OBCE is a stand alone state agency responsible to the Governor, Legislature, and the public, including chiropractic patients. The seven member board consists of five chiropractic physicians and two public members. The OBCE is assisted in the complaint review process by a full time investigator and a Peer Review Committee.

The laws and rules governing the practice of chiropractic may be found on the OBCE Web page at www.oregon.gov/obce, click on Laws & Rules. The complaint form will be found under the heading of Public Protection. It is the agency's goal to make a report to the Board within 120 days of receiving a complaint, however, some complaints may take longer. While it is not mandatory to file your complaint in writing or on the OBCE's form, it does ensure that the OBCE receives enough basic information to complete a proper investigation. The OBCE encourages you to use the complaint form to expedite this process.

Oregon law requires the OBCE to keep all of the information gathered during the investigation and the report's contents confidential. This means that while your complaint is under investigation, the investigator will not provide information regarding the course of the investigation *except where necessary to complete a thorough investigation*. You can assist the investigator in making a timely report by making yourself available to answer questions, and by providing requested information promptly.

Upon receiving the doctor's response and the investigative report, the OBCE must determine whether a violation of law or administrative rule has occurred, and/or whether a doctor's performance falls below minimum standards of practice. If further in-depth review is needed, particularly in those cases requiring chiropractic expertise, the Board may refer the case to its seven member Peer Review Committee. This committee of chiropractor physicians may interview the doctor, complainants and other parties to the complaint. Then the committee makes a report to the Board.

If the OBCE finds a violation it must determine whether a disciplinary or rehabilitative (or both) approach is appropriate. Previous disciplinary and complaint history is reviewed along with the severity and frequency of the current violations.

Proposed sanctions may include a letter of reprimand, civil penalty, probation (with conditions), suspension, cost recovery, voluntary surrender, and license revocation. A rehabilitative approach may include continuing education or a structured mentoring program. In some cases, the OBCE may send a "letter of concern" without determining a violation. Complaints which are inconclusive or where no violation is found are closed out with a finding of "insufficient evidence" (I.E.) or "no statutory violation."

The Board's actions in regard to a complaint (including the existence of the complaint) become a public record only when a majority of the Board votes to issue a notice of disciplinary sanction, a final order resulting from a notice of disciplinary action, a consent order, or a stipulated agreement that involves the licensee's conduct. These documents will all contain a factual summary of the basis for the Board's disposition of the matter. Names of affected individuals, other than the licensee, continue to be confidential.

In those cases where continued practice by a licensee is determined to be a threat to the public health and safety, the OBCE may issue an emergency suspension.

Once the OBCE has issued a notice of disciplinary action, due process rights for the affected licensee include a right to hearing before an impartial administrative law judge (ALJ). After the hearing the ALJ will issue a proposed order of findings of fact to be considered for final action by the OBCE. Any final order may be appealed to the Oregon Court of Appeals.

While citizens, patients, or payers should feel an obligation to report questionable activities, care or behavior by a licensee, chiropractic physicians and certified chiropractic assistants have a legal duty to report. Oregon law (ORS 684.200) states licensees "shall report to the Board any suspected violation.."

Notice to patient complainants: For the OBCE to complete a thorough investigation, it is helpful to receive specific permission from you to discuss your care with the Board. Please sign the authorization for release of confidential patient information.

For more information or a [complaint form](#), please [contact the OBCE](#) offices at 503-378-5816, fax 503-362-1260, or write OBCE, 3218 Pringle Road SE #150, Salem, Oregon 97302.

The mission of the Oregon Board of Chiropractic Examiners is to protect and benefit the public health and safety, and promote quality in the chiropractic profession. The values we embrace are consistency, equity, honesty, responsibility and collaboration.

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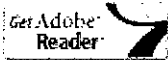
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Agencies A to Z

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Page updated: October 22, 2010

NOTICE OF CONTESTED CASE RIGHTS AND PROCEDURES

You should read this information to prepare for the hearing

1. **Law that applies.** The matter set for hearing is a contested case. The hearing will be conducted as provided in chapter 183 of the Oregon Revised Statutes and the administrative rules and statutes of the Oregon Board of Chiropractic Examiners (OBCE), OAR chapter 811, ORS chapter 684, and the Attorney General's Office of Administrative Hearing Rules, OAR Chapter 137-003-0501 to 137-003-0700.
2. **Right to attorney.** The OBCE will be represented by an attorney. You are not required to be represented by counsel, unless you are an agency, corporation or association. You have a right to be represented by an attorney at your own expense. If you are not represented at the hearing and determine in the course of the hearing that an attorney is necessary you may request a recess to allow you an opportunity to secure the services of an attorney. The ALJ will decide whether to grant such a request. Legal Aid Organizations may be able to assist you if you have limited financial resources.
3. **Subpoenas.** You may subpoena witnesses. The OBCE will issue subpoenas upon request and upon a showing of good cause and general relevance of the evidence sought. If you are represented by an attorney, your attorney may issue subpoenas. Payment of witness and mileage fees to a witness you subpoena is your responsibility.
4. **Administrative Law Judge.** The person presiding at the hearing will be an Administrative Law Judge from the Office of Administrative Hearings. The ALJ will rule on all matters that arise at the hearing, subject to any agency consideration of matters transmitted for agency decision under OAR 137-003-0635 or matters subject to agency review under OAR 137-003-0640 and 137-003-0570. The ALJ will be assigned by the Chief ALJ from the Office of Administrative Hearings. The Office of Administrative Hearings consists of employees of the Employment Department and independent contractors with the Office of Administrative Hearings. The ALJ does not have the authority to make the final decision in the case. The final determination will be made by the Board.
5. **Discovery .** Discovery is permitted by the parties and requests for discovery should be in writing. Discovery should be requested first by informal means by the parties. You have the right to respond to all issues properly before the ALJ and should present evidence and witnesses. Discovery is provided in OAR 137-003-0570, OAR 137-003-0572 and OAR 137-003-0570(8).
6. **Order of evidence.** A hearing is similar to a court proceeding but is less formal. Its general purpose is to determine the facts and whether the OBCE's actions are appropriate. The order of presentation of evidence is normally as follows:
 - a. Testimony of witnesses and other evidence of the Board in support of its proposed action.
 - b. Testimony of your witnesses and your other evidence.
 - c. Rebuttal evidence by the Board and by you.
6. **Burden of presenting evidence.** The burden of presenting evidence to support a fact or a position rests upon the party who proposes that fact or position. If you have the burden of proof on an issue, or if you intent to present evidence on an issue in which the agency has the burden of proof you should approach the hearing prepared to present the testimony of witnesses, including yourself, and other evidence that will support your position. All witnesses are subject to cross-examination and also to questioning by the ALJ.
7. **Witnesses.** All witnesses must testify under oath or affirmation to tell the truth. All witnesses, including yourself, are subject to cross-examined by other parties or by the ALJ.

Attachment F

8. **Admissible Evidence.** Evidence that may be admitted at the hearing is that which is commonly relied upon by reasonably prudent persons in the conduct of their serious affairs. Hearsay evidence is not automatically excluded. Rather, the fact that it is hearsay generally affects how much reliance the Board will place on it in reaching a decision.

Four kinds of evidence may be admitted.

a. Knowledge of the OBCE. The ALJ may take "official notice" of commonly known facts and of facts and conclusions developed from the experience in the specialized field of activity. This includes notice of technical or scientific facts. You will be informed at the hearing if the OBCE takes "official notice" of any fact so that you may contest those facts. The agency may also take "judicial notice" of a fact that is not subject to reasonable dispute in that it is generally known or is capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

b. Testimony of witnesses. This includes your own testimony.

c. Writings. This includes letters, maps, diagrams and other written material offered as evidence.

d. Photographs, experiments, demonstrations and similar means to prove a fact.

9. **Objections to evidence.** Evidence may be objected to on any legal grounds; including:

a. Irrelevant. The evidence has no tendency to prove or disprove any issue involved in the hearing.

b. Immaterial. The evidence is offered to prove a proposition which is not a matter in issue at the hearing.

c. Unduly repetitious. The evidence is merely repetitive of what has already been offered and admitted.

d. Hearsay, authenticity or foundation. To the extent that such evidence would not commonly be relied upon by reasonably prudent persons in the conduct of their serious affairs.

10. **Continuances.** Unless allowed by the OBCE or ALJ, there will be no continuance and the record will not be reopened regarding any matters determined at the conference or hearing. However, if you can show that the record should remain open for additional evidence, the ALJ may grant you additional time to submit such evidence.

11. **Proposed Order and Exceptions to proposed order.** The ALJ will issue a proposed order in the form of findings of fact, conclusions of law and recommended agency action. You will be provided with a copy and you will be given an opportunity to make written objections, called "exceptions" to the ALJ's recommendations. You will be notified when exceptions to the proposed order must be filed. You will also be notified when you may appear and make oral argument to the Board if applicable

Not later than 10 days after the date of the filing of the proposed order with the Board, you may file and serve on the OBCE and the ALJ, your written exceptions to the proposed order.

a. The exceptions shall be confined to the factual and legal issues which are essential to the ultimate and just determination of the proceeding, and shall be based only on grounds that:

A. A necessary finding of fact is omitted, erroneous, or unsupported by the preponderance of the evidence on the record;

B. A necessary legal conclusion is omitted or is contrary to law or the Board's policy; or

C. Prejudicial procedural error occurred.

- b. The exceptions shall be numbered and shall specify the disputed findings, opinions or conclusions. The nature of the suggested error shall be specified and the alternative or corrective language provided.

After the OBCE has received and reviewed the proposed order and the exceptions, if any, the OBCE shall:

- a. Entertain such oral argument as it determines necessary or appropriate to assist it in the proper disposition of the case; and
- b. Remand the matter to the hearings officer for further proceedings on any issues of fact which the OBCE believes were not fully or adequately developed; or
- c. Enter a final order adopting the recommendation of the ALJ as the OBCE's order or rejecting the recommendation of the ALJ. If the OBCE elects to reject the recommendation of the ALJ, the final order shall contain necessary findings of fact and conclusions of law.

12. **Final Order** The agency will render the final order in this matter. The agency may modify the proposed order issued by the ALJ. If the agency modifies the proposed order in any substantial matter, the agency in its order will identify the modification and explain why the agency made the modification. The agency may modify a proposed finding of "historical" fact only if there is clear and convincing evidence in the record that the proposed finding is wrong.

13. **Conferences** Prior to a hearing, the ALJ may schedule conferences to:

- a. Establish a procedural schedule, including dates for prefiled testimony and exhibits;
- b. Identify, simplify or clarify issues;
- c. Eliminate irrelevant or immaterial issues;
- d. Obtain stipulations, authenticate documents, admit documents into evidence and decide the order of proof; and
- e. Consider other matters which may expedite the orderly conduct and disposition of the proceeding.

Except as provided in the following paragraph, the record shall reflect the results of any conferences, which shall be binding on all parties.

14. **Record** A record will be made of the entire hearing to preserve the testimony and other evidence for appeal. This will be done by a tape recorder. Ordinarily the record will not be transcribed unless you appeal to the Court of Appeals. If you appeal, you will not have to pay for the cost of transcribing the record, unless the petition is frivolous or you unreasonably refuse to stipulate to a limited record. If you do not appeal, a copy of the record will be made available to you upon payment of the cost of making it.

15. **Appeal** If you wish to appeal the final order, you must file a petition for review with the Oregon Court of Appeals within 60 days after the final order is served on you. See Oregon Revised Statutes 183.480 et seq.