
MEMORANDUM

Legislative Fiscal Office
900 Court St. NE, Room H-178
Salem, Oregon 97301
Phone 503-986-1828
FAX 503-373-7807

To: *Capital Construction Subcommittee*

From: *Matt Stayner, Legislative Fiscal Office*
(503) 986-1840

Date: June 13, 2013

Subject: *SB 5509, Board of Chiropractic Examiners, Supplemental
Limitation Request*

SB 5509 increases the other funds expenditure limitation by \$25,743 for the Oregon Board of Chiropractic Examiners (OBCE) in the current (2011-13) biennium. This bill is in response to a request for additional limitation authority forwarded to the co-chairs of the Joint Committee on Ways and Means by the Executive Director of OBCE dated June 5, 2013 and attached to this memo.

The reason for this request is that the expenditures of the OBCE are projected by both the Executive Director of the agency and the Department of Administrative Service Shared Client Services accountant to exceed the Legislatively Approved Budget for the agency, including a \$69,550 Other Funds expenditure limitation increase for Attorney General expenses that was provided to the agency in the early session bill (HB 5052, Chapter 41, Oregon Laws 2013) passed by the Legislature and signed in to law effective April 15, 2013. The original agency request for the additional AG expenditures was made at the end of October 2012, but was moved forward in HB 5052 at the recommendation of the LFO because although the agency anticipated the overrun in AG costs, a better estimate of the required additional limitation could be made once the costs began to be realized in February and March. No additional limitation increase was proposed by the agency for professional services at the time the additional AG costs were included in HB 5052.

The net projected limitation shortfall totals between \$13,000 and \$16,000 based on information provided to the LFO from the agency and DAS. The requested amount of \$25,743 includes a safety factor for unknown or unexpected expenses as the agency seems to be experiencing difficulty in estimating expenses through the end of the biennium. The OBCE director attributes the shortfall primarily to unexpectedly high costs of professional services, specifically those costs related to the Office of Administrative Hearings (OAH) for contested case proceedings. The professional services line item expenditures is anticipated to be \$25,923 over the Legislatively Approved Budget (LAB). Of the total professional services expenditures of \$74,500, expenditures between July 1, 2011 and December 31, 2012 totaled just over \$25,000, the remaining \$49,500, and subsequent budgetary shortfall, occurred within the last six months of the biennium. In addition to OAH hearing officer panel charges, professional

services expenditures also include peer review committee per-diem costs, chiropractic consultant fees, and expert witness charges.

The net projected limitation shortfall is not entirely attributable to unexpected OAH costs, but was unanticipated by the agency and when compounded with other agency expenditure decisions, resulted in the limitation shortfall described above. In addition to the overrun in professional services, the agency experienced budgetary shortfalls in a number of line items including:

- Personal Services \$8,336
- Instate Travel \$5,893
- Telecommunications \$7,246
- IT equipment and services \$7,940
- Dues and subscriptions \$2,028
- Other services and supplies \$10,191

A portion of the shortfall was offset by budgetary savings in four primary categories:

- Office expenses \$17,926
- State government surcharges \$7,461
- Publications \$7,843
- In-state travel \$1,084

Attached to this memo is an email dated June 11, 2013 from Dave McTeague, Executive Director of the OBCE. The email describes the use of temporary employee as undercover agents to expose insurance fraud in cooperation with the National Insurance Crime Bureau. Although this action appears to have furthered the investigation of potential violations of the subject clinic, the expenditure accounts for nearly the entire overage in personal services.

A thorough agency explanation of the use of budgeted funds due to the significant amount of puts and takes between budgetary line items along with an explanation of the process that the agency uses to estimate Attorney General and OAH costs may be warranted when examining this request.



Oregon

John A. Kitzhaber, MD, Governor

Board of Chiropractic Examiners

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June 5, 2013

Senator Richard Devlin, Co-Chair
Representative Peter Buckley, Co-Chair
Joint Committee on Ways & Means
900 Court Street NE
H-178 State Capitol
Salem, OR 97301-4048

Dear Co-Chairpersons:

Nature of the Request

The Oregon Board of Chiropractic Examiners (the Board) respectfully requests an additional expenditure authority of \$25,743 in Professional Services for the 2011-13 biennium.

The Board is experiencing an ongoing increase in legal and contested case costs. A recent contested case hearing was extraordinarily expensive with billings coming late in the biennium.

Recently you provided additional expenditure authority to meet our AG costs in House Bill 5052 (Chapter Law 41). Since that time, we have had unforeseen billings from the Office of Administrative hearings that are causing us to exceed our expenditure limitation. Our current budget for Professional Services is \$51,576. Our expenditures will be at least \$77,319, a difference of \$25,743. Of that the OAH billings will total about \$47,817.

Agency Action

For the month of June, the Board has requested the assigned AAGs (four of them) working on various issues to cease work and stop billing until July 1st. The Board has stopped utilizing any paid chiropractic consultants working on file reviews and complaints until July 1st. The Board has also stopped ordering office supplies for the month and stopped referring applicant background fingerprint checks to the State Police until July 1st.

Other agency actions to reduce expenditures this biennium include Egov efforts (emailing newsletters, public notices; electronic board packet), having several board meetings by telephone, and regressing back to the previous method of paying mentors for their services (doctors pay the mentors directly) to keep from exceeding our special payments account.



Other projects that have incurred expenses are a major computer and software upgrade which is required for implementation of online license renewal, which goes live in the near future. We also installed a security system in conjunction with a new hallway door, a measure which was long overdue. However, were it not for our Professional Services overage, we are within our Legislatively Approved Budget.

The Board has sufficient ending balance, estimated to be around \$306,000 on June 30th to fund this request. Also, pending approval of SB 106 and SB 5508, our budget bill for 2013-15, a modest fee increase will be implemented in the next biennium that will ensure an appropriate ongoing ending balance.

Legislation Affected

ORS Chapter 249 is the budget authorization and ORS 684 is the governing law for this agency.

Action Requested

The Board requests an additional \$25,743 to meet our Professional Services (primarily Office of Administrative Hearings) costs in this biennium.

Sincerely,



Dave McTeague
Executive Director



Oregon

John A. Kitzhaber, MD, Governor

Oregon Board of Chiropractic Examiners

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October 31, 2012

The Honorable Peter Courtney, Co-Chair
The Honorable Bruce Hanna, Co-Chair
The Honorable Arnie Roblan
State Emergency Board
900 Court Street NE
H-178 State Capitol
Salem, OR 97301-4048

Dear Co-Chairpersons:

Nature of the Request

The Oregon Board of Chiropractic Examiners (the Board) is experiencing an ongoing increase in legal and contested case costs. Our ability to meet this expense is essential to our mission of public protection. We respectfully request additional expenditure authority of \$64,365 to meet our legal, AG costs and hearings costs in this biennium.

Overall, complaints/cases increased from 69 in 2010 to 130 in 2011. Also, investigations have become more lengthy and complex. More respondents are represented by legal counsel necessitating our Assistant Attorney General's (AAG) involvement at earlier stages in our investigations. Our AAG drafts the Notices of Proposed Disciplinary Action and gives ongoing advice to our board. This biennium we've had five appellate court cases, more than we've ever had before. We currently in the process of conducting a major contested case hearing. More hearings are expected in 2013.

Ongoing cases and settlement negotiations necessitate the assistance of our assistant attorney general. So far this biennium over 41 final board orders have been researched and prepared along with Notices of Proposed Disciplinary Action that have been produced. This high level of complaint and case activity will continue for the foreseeable future.

Currently the legislatively approved budget for AG costs is \$164,355, the exact same amount as in the 2009-11 biennium. In that biennium, our actual AG costs were \$196,800, a difference of \$32,445. The Board's need for additional funds for this mission critical work has increased in the current biennium.



Agency Action

For the great majority of complaints and cases where board action is needed, the Board is able to reach appropriate negotiated settlements. Key to the ability of the Board to reach these settlements is the ability to pursue a case to hearing if and when it becomes necessary.

Other agency actions to reduce expenditures this biennium include Egov efforts (emailing newsletters, public notices; electronic board packet), having several board meetings by telephone, and regressing back to the previous method of paying mentors for their services (doctors pay the mentors directly) to keep from exceeding our special payments account.

We have also reduced our private investigator contracts (that helped us reduce complaint backlogs) and greatly reduced our use of chiropractic consultants – *at a time when we need more of both.*

Legislation Affected

ORS Chapter 249 is the budget authorization and ORS 684 is the governing law for this agency.

Action Requested

The Board requests an additional \$64,365 to meet our legal and AG costs in this biennium.

Sincerely,



Dave McTeague
Executive Director

Attachments

1. Complaint Statistics
2. AG expenditures/estimates for 2011-13 biennium

Stayner Matt

From: MCTEAGUE Dave * BCE <dave.mcteague@state.or.us>
Sent: Tuesday, June 11, 2013 11:59 AM
To: Stayner Matt
Subject: Chiropractic board personal services

Matt,

On personal services, we're projected to be over by \$8,335. We've been fully staffed all biennium. Below is explanation of temp employees. Also one of our admin assistants who is at .75 FTE frequently worked some additional hours to meet workload. Will get you S & S projections later today.

At the very beginning of the biennium we utilized four temporary employees, but two mainly. The total paid to them at \$25.96 per hour was \$5322 with w/c, ss etc. a total of \$6,296.

In a March 2011 meeting with (insurance company 1) Special Investigation Unit and claims, Matt McCausland from Dept. of Justice criminal division and his investigator, and Gordon Compton of the National Insurance Crime Bureau (NICB), (insurance company) revealed that they had over 150 Personal Injury Accident Protection (PIP) claims where (chiropractic clinic) had allegedly overbilled for x-rays over the period from 2007-2010. This amounted to a nearly \$20K loss to just one insurance company. Matt suggested an undercover (UC) pretext patient operation be conducted, and since we had experience with that he suggested we conduct the operation in coordination with NICB.

(chiropractic clinic) has been under investigation for well over two years for this and other issues, with multiple complaints opened against them. Many other cases taking precedence (sexual misconduct in particular) have slowed our progress on this. Numerous reports of concern continue to be received regarding (chiropractic clinic).

NICB drafted the operations plan, and engaged (insurance company 2) and (insurance company 3) to provide PIP insurance coverage for two UCs. The UCs were selected from individuals previously identified in other operations. They were used as temporary state employees because they needed to pose as a typical patient that goes to (chiropractic clinic). (chiropractic clinic) advertises heavily to the Latino population and has sited their clinics in heavily Hispanic areas. The typical patient that goes to (chiropractic clinic) is Latino, working class, with limited access to health resources, and limited grasp of English. The UCs had to pass muster for this type of patient, as (chiropractic clinic) staff were well known to be on the lookout for pretext patients. The UCs were thoroughly briefed and scripted, and dressed the part of landscape workers who had a motor vehicle accident.

Both UCs were treated for multiple visits, their visits were billed to insurance, and they created reports for each visit.

The Board of Chiropractic reviewed (chiropractic clinic) cases at their May 2013 meeting and referred the case and investigation to date to the Peer Review Committee for in person interviews and extensive review of multiple patient files. This is expected to be the committee's main project for the foreseeable future. My goal is to bring this to a resolution, one way or the other.

Why this is important: Abuse of PIP by some clinics potentially threatens access by patients to chiropractic care. Other states have restricted chiropractic care in response to excessive treatment and fraud issues. The Oregon chiropractic profession took a huge hit in 1990 for similar issues when they were drastically restricted from treatment of injured workers under workers compensation.

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

503 373 1620

From: Stayner Matt [<mailto:matt.stayner@state.or.us>]
Sent: Monday, June 10, 2013 5:00 PM

**PROPOSED AMENDMENTS TO
SENATE BILL 5509**

1 In line 2 of the printed bill, delete “appropriating money;”.

2 Delete lines 5 through 16 and insert:

3 **“SECTION 1. Notwithstanding any other law limiting expenditures,**
4 **the limitation on expenditures established by section 1, chapter 249,**
5 **Oregon Laws 2011, as modified by legislative or Emergency Board**
6 **action, for the biennium beginning July 1, 2011, as the maximum limit**
7 **for payment of expenses from fees, moneys or other revenues, includ-**
8 **ing Miscellaneous Receipts, but excluding lottery funds and federal**
9 **funds, collected or received by State Board of Chiropractic Examiners,**
10 **is increased by \$25,743.**

11 **“SECTION 2. This 2013 Act being necessary for the immediate**
12 **preservation of the public peace, health and safety, an emergency is**
13 **declared to exist, and this 2013 Act takes effect on its passage.”.**

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