Oregon Board of Chiropractic Examiners (OBCE)

Public Notice & E-Newsletter Update

May 9, 2018

- President's Report
- Executive Director's Report
- Updates and Policy Changes
- From Our Investigators

President's Report

Greetings Colleagues!

SB 1547

For the past several years, chiropractors in the state of Oregon have had to deal with a frustrating reality. Despite our training in diagnosis and management of neurological and musculoskeletal injuries, we have been barred from clearing concussed athletes to return to play. What made the situation odd was the fact that there was no restriction in our ability to recognize and diagnose a concussion, merely to recognize when it had resolved and an athlete was safe to return to normal activities. Wait…it gets even stranger. It was only concussions and their relationship to returning to sports, not other activities such as work or other activities of daily life.

Finally, thanks to diligent efforts on the part of the Oregon Chiropractic Association, multiple sports medicine doctors, and allied legislators, SB 1547 was recently passed which leveled the playing field for return to play decisions. This came despite heavy opposition from special interests.

The OBCE had been approached on several occasions about whether management of concussion was within our scope of practice. We have always held that it is based on the education we all receive as part of our chiropractic school training. The concern being voiced by opponents of SB 1547's inclusion of chiropractors was that we didn't have the training and experience to manage these problems effectively. This was based on a misunderstanding of our training. However, not everybody deals with concussed individuals on a regular basis and the Board felt that a mandatory review of the proper diagnosis and management of concussion injuries would be of great benefit to our licensees and their patients.

For this reason, we have mandated that all DC licensees complete the Center for Disease Control's (CDC) training, "HEADS UP Clinicians." This is a succinct, free, online course that reviews the identification, risks, and management of concussion injuries. It is specifically meant for healthcare providers. The CDC training is periodically updated to reflect the emerging evidence-based approach to concussion management. **All Oregon DC licensees must complete this training by June 30, 2018. We are also requiring that all new DC licensees complete this training before their first renewal.** Going forward, there is no reason that chiropractors shouldn't be some of the best prepared providers for the diagnosis and management of concussed patients. We feel this is critical given the number of trauma patients we see, especially from motor vehicle collisions and sports injuries.

I have been told that this requirement was very beneficial in guiding the decision-making of legislators as they considered SB 1547. Arguments that chiropractors don't have sufficient training in this area lost credibility when they could see our commitment to making sure our providers are prepared. There is no other group of Oregon healthcare providers who have a similar requirement as of writing this article. Hopefully, they will follow our lead.

It is worth noting that SB 1547's requirement is that a healthcare provider complete a course which will be developed by Oregon Health Sciences University (OHSU). Once this training is available, chiropractors should complete this in order to return concussed athletes to play. While the CDC program is very well done for a one-hour course, the OHSU training will be required as well. If you have more questions about this, I recommend reaching out to the OCA who has been working for years to gain this clinical privilege for doctors of chiropractic in our state.

CA Scope of Practice and the Board's Guide to Policy and Practice Questions

On a different note, the OBCE has received an increase in correspondence recently about the role of the Chiropractic Assistant (CA) in a clinical setting. Specifically, many of the questions have been regarding the provision of soft tissue therapies. There have also been related questions about how updates are made to the OBCE document titled, "The Board's Guide to Policy and Practice Questions," (P&P) which provides guidance to practitioners about the application of the rules and statutes governing the practice of chiropractic in Oregon. The purpose of this article is to explain some of the recent changes as they pertain to CAs, describe how this process works, and how you can have input on it.

From time-to-time, the Board receives questions about the application of rules and statutes. We review and discuss these questions before providing an official response. The P&P was published as a collection of these responses, making it easier to access for anybody interested. It also keeps us from having to answer the same questions repeatedly. Because this guide is referenced in our rules, when we update sections of it, we update the rule through the administrative rulemaking process. For the sake of transparency, whenever a rule is being changed, the public must be notified and a public rule hearing is held to allow interested stakeholders to provide input and make comments if they wish. We follow this process to ratify and adopt changes we need to make to the P&P. In the past, this ratification has happened once or twice per year (we have 6 scheduled meetings per year).

Recently, the Board reviewed a policy question that was asked about CAs performing Myofascial Release. To keep this document as relevant as possible, we are continually reviewing and revising parts of it to match the evolving landscape of healthcare and chiropractic in the state of Oregon. In 2013, the Board received a question about whether CAs could perform the technique system known as Myofascial Release and determined that there wasn't enough training in basic anatomy to use this system, at that time. Since 2013, the education requirements for CA certification changed to include a specific requirement for basic anatomy training. This addressed the concern the Board had with that question previously. In addition, there has been a lot of confusion since there is a technique system called Myofascial Release and then there is the phenomenon of myofascial release which potentially occurs with any soft tissue therapy. Based on the evolution of the training requirements and the desire for clarity about the issue, the Board thought it would be best to remove this policy response. The decision was accepted, by vote, and the guide was updated.

In our January 2018 board meeting, we voted to open the rule containing the guide to rulemaking so that we could have a hearing to ratify and adopt changes. The piece about Myofascial Release was part of this ratification along with other changes, such as grammatical fixes and an update to the policy that prohibited CAs from using Class IV lasers. We received written public comment and during the public hearing, we heard comments from representatives of the American Massage Therapy Association which accused the OBCE of trying to expand the scope of practice for CAs and encroach on market share for Licensed Massage Therapists. AMTA also alleged that we were trying to use a sneaky way of changing these rules without input from public stakeholders. To clarify, they made this allegation - that we were trying to change the guide without any input from the public - through written public comment and in attendance at our *public rulemaking hearing* about the rule. They also attempted to impugn the ethics and morals of the Assistant Attorney General assigned to our board (who is, as it so happens, also the AAG for the Oregon Board of Massage Therapists (OBMT)). They concluded their testimony with a threat of a lawsuit.

Following this meeting, they appeared in a public meeting of the OBMT and levied claims that the OBCE was attempting to illegally expand the scope of practice of CAs and that we had designs to do this based on a desire to steal market share from massage therapists. They called what we did, "encroaching" on the scope of the Oregon Licensed Massage Therapist, claiming that our primary motivation was to expand billing options for DCs in Oregon.

I have corresponded with the OBMT to address all of these accusations which are false. The fact is that the OBCE has no power to expand the scope of practice of CAs, or DCs for that matter. Scope of practice is established by the state legislature in our statutes (ORS 684.010, 684.115). For the CA, this includes assisting an Oregon licensed DC in providing physiotherapy, electrotherapy, and hydrotherapy. Also, one of the OBCE's primary missions is public protection. We have no goals of expanding or constricting the scope of practice of our licensees so that the profession can grow or become more profitable – that is the role of your professional association. Our philosophy is that the services chiropractors provide are important to the public health in Oregon since competent, conservative, healthcare addresses controversial public health

issues such as opioid addiction, a shortage of doctors with the aging population, and unnecessary use of diagnostic testing, to name a few. Any actions we undertake that are perceived to "expand" chiropractic is with these objectives in mind, not the market share or profitability of practice in the state.

What we *are* doing with CAs is looking at how they are trained and possible different tiers of certification. Currently, the Board has convened a Rules Advisory Committee, which consists of a variety of chiropractors, CAs, LMTs, educators, and, most recently, a billing professional, to examine how we can make sure that CAs have the most appropriate education for the duties they will be performing in a clinical setting, depending on tier level. What may arise from this committee is a proposal to the Board that could streamline training requirements for Licensed Massage Therapists to become a CA. I am anticipating that there will also be proposals for training requirements that will provide more robust and specific education which will serve patients at a higher level.

In conclusion, to answer some of the recent, most frequently asked, questions on the topic:

- No. We are not expanding the scope of practice for CAs because that is outside of our authority.

- Yes. We have changed the Guide to Policy and Practice Questions and have received feedback from stakeholders before accepting the most recent version by vote.

- Yes. The Board updated the entry about CAs not performing Myofascial Release because the entry was outdated due to changes in CA training.

- Yes. CAs are not limited as to the number of units of any procedure they can provide, including soft tissue therapies. As with any procedure, the chiropractor must provide adequate training and supervision to ensure treatments are safe and effective for the patient. Remember, at the end of the day, it is the chiropractor who is responsible for any problems that may arise as a result of actions of those working under his/her supervision.

If you have questions, please don't hesitate to reach out to us.

Sincerely,

Jason Young, DC, MSHNFM
President, OBCE

Executive Director's Report

Public Interest

Elder Abuse Reporting. At the Board's January 2018 meeting, Assistant Attorney General Ellen Klem provided a fantastic training on Elder Abuse in the healthcare/chiropractic office context. As a reminder, chiropractic physicians have a mandatory duty to report Elder Abuse under the Elderly Persons & Persons with Disabilities Abuse Prevention Act found in Oregon Revised Statute (ORS) Chapter 124. ORS 124.060 states: "Any public or private official having reasonable cause to believe that any person 65 years of age or older with whom the official comes in contact has suffered abuse, or that any person with whom the official comes in contact has abused a person 65 years of age or older, shall report or cause a report to be made in the manner required in ORS 124.065…" The statute further defines who are "public or private officials," what types of behavior constitute abuse (ORS 124.050), and how to make the report of such behavior (ORS 124. 065). Please review this ORS chapter at https://www.oregonlegislature.gov/bills_laws/ors/ors124.html AAG Klem welcomes questions and is available to provide trainings on this most important topic. You can contact her at ellen.klem@state.or.us or by cell phone: 503-507-1061.

Marijuana Information. We often get calls asking about the ability of DCs to provide, prescribe, or use marijuana and its derivatives to and for patient care. The Oregon Liquor Control Commission (OLCC) regulates recreational marijuana and the Oregon Medical Marijuana Program (OMMP) through the Oregon Health Authority (OHA) regulates medical marijuana. According to the OLCC, "…if the product is at an OLCC retailer or OHA dispensary, it should not be used. This is because the product is likely a 'marijuana item' and it is unlawful to provide a marijuana item for consideration without a license. In the case of a massage therapist or chiropractor, the consideration is the cost of the service."

For responses to other frequently asked questions regarding marijuana and the OLCC, click here: http://www.oregon.gov/olcc/marijuana/Pages/Frequently-Asked-Questions.aspx

For the medical marijuana program, OMMP states: "Our program's role is to register patients, caregivers, growers, dispensaries, and processors. We also have authority over the testing of cannabis. The Oregon Medical Marijuana Act and our rules do not authorize Chiropractors to recommend the use of medical marijuana. A chiropractor would not be able to use marijuana on a patient. They would not be able to give or sell marijuana to a patient unless they became a licensed dispensary or retail shop. Products derived from hemp may be sold and used though."

You can find more information on the OHA OMMP program here:

http://www.oregon.gov/oha/PH/DISEASESCONDITIONS/CHRONICDISEASE/MEDICALMARIJUANAPROGRAM/Pages/physicians.aspx

FCLB Pennebaker/Wiley Outstanding Chiropractic Licensing Board Award 2018. I am proud to announce that the OBCE is the recipient of the Federation of Chiropractic Licensing Board's Pennebaker/Wiley Outstanding Chiropractic Licensing Board Award for 2018. The award was in recognition of our work with licensees facing mental or drug related incapacitation, efficiencies obtained within our licensing and investigation processes, supporting the allowance of the FAA BasicMed Examination, our focus on educating new licensees, and our implementation of fingerprint background checks at initial licensure and at renewal. Thank you to our Board Members: Dr. Jason Young, Dr. Franchesca Vermillion, Dr. Lisa Kouzes, Dr. Paul Bjornson, Dr. Ron Romanick, Mr. Glenn Taylor, and Ms. Amber Reed, and to our staff: Miriam Lara, Kelly Beringer, Donna Dougan, Dr. Frank Prideaux, and George Finch.

Board Members Dr. Lisa Kouzes, Dr. Jason Young, Dr. Franchesca Vermillion; Executive Director Cass McLeod-Skinner; Former OBCE President and current NBCE Board Member Dr. Daniel Côté

Fiscal Responsibility and Accountability

In November of 2015, members of OHA's Workforce survey team presented to the Board the details of the survey, its statutory and mandatory nature, its roll out process, and details of the $2 fee per licensee/completed survey that the OHA would charge the OBCE. Instead of passing along this $2 fee per survey to the Licensees at the time of implementation, the Board determined to absorb the additional fee with the possibility of revisiting the fee absorption issue in the future. The Board reviewed the issue at its regular January board meeting and determined to again absorb the $2 fee per survey, with future review for reconsideration.

Due Process, Fairness, Transparent Governance

The OBCE meeting and location schedule for the rest of 2018 is as follows and can be found on our website (www.oregon.gov/obce):

May 24-25	Ashland
July 26	Salem (OBCE office)
September 27-28	North Coast (TBD)
November 15	Salem (OBCE office)

If we can be of help to you or your staff in any way, please don't hesitate to contact us.

Take good care,

Cassandra C. McLeod-Skinner, J.D.
Executive Director, OBCE, 503-373-1620, cass.mcleod-skinner@oregon.gov

Updates and Policy Changes

REMINDERS

OBCE Listserve Update

As you are all aware, the OBCE uses this listserv to communicate to the profession, CAs, and DCs alike. These messages are always in relation to your licensure and profession. For the past decade, the Oregon State Library has been providing this service. Unfortunately, they are terminating the service as of June 30, 2018. We are in the process of exploring alternative providers. We want you to be aware that you will start to see our eBlast News and Public Notices coming from a different email address. Please review messages carefully referencing the OBCE in the subject line. Once we have the new provider, we highly recommend that you add that email address to your "safe sender" list in your email. Thank you for making a note of this.

CA application/certification process and delays

We have received a number of comments about the "longer turnaround times" for CA applications. We reviewed our processes, and points in time where delays occur. Here are the results of that review:

1. Immediately upon receiving the applications, we verify that all documents are included. At least 25-30% of applications come in without any or all of the proof of 12 hours training. We make calls to the applicant and clinic. Then, we wait to receive the requested information.

2. When we have a complete application packet, staff starts sending emails within 1-2 workdays. In one email, to the applicant we send both the fingerprint instructions, and the CA exam. The email currently comes from Oregon.obce@oregon.gov. We advise the applicant to create their fingerprint appointment as soon as possible because the resulting background report takes 7-10 days to process. Once we have sent the email, timing is in the applicant's control.

3. If an applicant has disclosed any arrests/charges/convictions, we verify that we have all of the required documentation. If the applicant has not provided police reports and court documents, we send a request letter to the applicant. The applicant will be able to test and fingerprint while we wait for the information, but they will not be certified until the OBCE approves the applicant.

4. When we receive a completed exam, we grade it within 1-2 workdays.

5. When we receive a criminal background report, and there are no issues of concern, we issue the CA certificate within 1-2 workdays (assuming the exam has been received/graded/passed).

6. When we receive a criminal background report that shows arrests/charges or convictions which the applicant did not initially disclose, the process immediately slows. We send a letter to the applicant by regular mail requesting the following documentation. We are in the process of transitioning this communication to email only.

    - A letter of explanation why the matter was not disclosed;
    - An explanation of each reported incident;
    - Copies of all police reports;
    - Copies of all court documents – charging and judgments;
    - Proof of completion for any required programs/treatment;
    - A letter from the supervising DC.

    Some arrests/charges/convictions require the Board's full review and, unfortunately, the Board only meets every other month. This can add weeks or months to the process, depending on the timing of the application.

Other issues which hinder the process:

- Staff mistyping email addresses! Sorry, it has happened a few times;
- Applicants not checking email;
- Applicants not completing the exam in a timely manner;
- Applicants not putting enough postage on the exam when mailing it back to the OBCE (postal service will return it to the sender); and
- Some applicants or clinics never respond to the OBCE's request for additional documentation, fees, or proof of training.

In conclusion, if we stay on top of the process, we will see an improvement in the turn-around times. The average (50-75% of applicants) turn-around time is 2 weeks.

REMINDER: Changes to the June/July 2018 CA renewal cycle

1. The Board is almost done with development of the online CA renewal application. No paper renewal forms will be distributed; you will receive an email notice only.

2. The Board will transition the CA renewal from one renewal date (July 31) to a birth month renewal.

To transition, everyone will pay a prorated fee in June/July, complete CE, and be issued a new certificate with an expiration date showing their birth month in 2019.

CE will not be prorated. The fee proration will be broken down into three fees only, as follows:

Birth Month	Fee	CE due by July 31, 2018	Expiration Date upon Renewal	Certificate Issued is Valid for (# months; dates)
January	$25	6	January 2019	6 months; Aug 2018 to Jan 2019
February	$25	6	February 2019	7 months; Aug 2018 to Feb 2019
March	$25	6	March 2019	8 months; Aug 2018 to Mar 2019
April	$25	6	April 2019	9 months; Aug 2018 to Apr 2019
May	$50	6	May 2019	10 months; Aug 2018 to May 2019
June	$50	6	June 2019	11 months; Aug 2018 to Jun 2019
July	$50	6	July 2019	12 months; Aug 2018 to Jul 2019
August	$50	6	August 2019	13 months; Aug 2018 to Aug 2019
September	$75	6	September 2019	14 months; Aug 2018 to Sept 2019
October	$75	6	October 2019	15 months; Aug 2018 to Oct 2019
November	$75	6	November 2019	16 months; Aug 2018 to Nov 2019
December	$75	6	December 2019	17 months; Aug 2018 to Dec 2019

CAs and Fingerprinting

As the Board transitions to the online, birth month renewal, we will also start implementing fingerprint background checks for CAs. This change will not start until January 2019. CAs will be notified with their regular email renewal notice when it is time to renew and be fingerprinted. Like DCs, fingerprinting at renewal will occur every six years.

Kelly Beringer
Administrative Assistant, CA Program; 503-373-1573, kelly.beringer@oregon.gov

From Our Investigators

Providing Records When Requested

Our E-blast topics are drawn from the questions, complaints, and calls for clarification that our office regularly receives. As we see trends in questions and occurrences, we try to include helpful information in the E-blast to help our licensees avoid complaints or misunderstandings with patients and other interested parties.

We generally see several typical scenarios: (1) a patient requests records from the doctor's office and gets no response; (2) a patient's attorney contacts the doctor's office and gets no response; and (3) patient records are held hostage in exchange for payment of outstanding bills.

In the first scenario, we've found that there are generally two reasons for the delay: that the doctor's staff is not educated regarding responding to records request resulting in the requests going unanswered, and that doctors have left their offices for some personal or family emergency and there is no protocol in place for responding to records requests. Please establish a protocol in your office for responding to records requests from patients. The Board's rules require that you respond to records requests within a "reasonable time[i]." More than a month's delay will likely be considered unreasonable. We suggest responding as soon as possible as patients have a variety of reasons for requesting records, including furthering their medical care. The second most common scenario is that the doctor has had to leave their office to attend to an emergency. Please have in place a method or person designated to respond to records requests in your physical absence. It is your responsibility to respond to patient records request. When no response is received from your office, the patient's next call is generally the Board's offices.

In the second scenario, the patient's attorney makes the records request. Our office has heard numerous concerns from doctors about patients' legal proceedings and concerns about litigation not including the doctor's billings. While these may be valid concerns, you are still required to provide records to the "patient or a third party upon the patient's written request".[ii] Please keep in mind that requests from legal representatives are often time sensitive. We hear from attorney's offices nearly weekly with these concerns. Be mindful that a collegial working environment with other professionals can only help your practice.

The third most common scenario involves the doctor requiring the patient to pay outstanding bills before records will be released. The Board's rules do not provide an exception for releasing records. In some scenarios, injury cases are wrapped up in litigation that impact the patient's ability to pay outstanding bills. Obtaining legal advice on collecting outstanding debts is advisable depending on the situation. However, the Board's rule is clear: "A patient shall not be denied summaries or copies of his/her medical records or X-rays because of inability to pay or financial indebtedness to the Chiropractic physician."[iii]

Common questions:

Can I charge for copies of records?

Yes. The Board's rules allow you to charge a "reasonable" fee for copying and providing records. A second complaint we often get relates to unreasonable fees. A reasonable fee could be calculated based on staff time and actual cost to produce copies of records. Please do not arbitrarily establish a set fee so high it discourages or prevents patient's access to their records.[iv]

Do I have to provide the entire file, including imaging?

Yes. The Board's rules require "copies or summaries of medical records and originals or copies of the patient's X-rays."

But I have some notes in my files that I'm concerned about providing to the patient, do I really have to provide *everything*?

It depends. The Board's rules state that "medical records do not necessarily include the personal office notes of the Chiropractic physician or personal communications between a referring and consulting physician relating to the patient."

George Finch, J.D.
Board Investigator; 503-373-1615, George.finch@oregon.gov

[i] OAR 811-015-0006(1)
[ii] *Id.*
[iii] OAR 811-015-0006(2)
[iv] *Id.* and ORS 192.563