



Oregon

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Oregon Board of Chiropractic Examiners

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PUBLIC SESSION MEETING MINUTES

Western States Chiropractic College

Hampton Hall Conference Room

2900 132nd, Portland, Oregon

February 8, 2007

Board Members Present

Minga Guerrero, DC, President

Michael Vissers, DC Vice-President

Joyce McClure, DC, Secretary

Michael Megehee, DC

Steve Koc, DC

Cookie Parker-Kent, Public Member

Excused: Kevin Shuba, Esq. Public Member

Staff Present

Dave McTeague, Exec Dir

Kelly Bird, Administrative Assistant

Lori Lindley, AAG

Public Attendees: Doctors Jeffrey Tunick, Julio Cardona, Sandra Burns, Judith Boothby, James Aungst, Joel Agresta, Lester Lamm, and Joseph Brimhall, WSCC President. Others present are Lisa Brooking, LMT, Katherine Larglas, Valarie Lamphear, and Susan Brenard.

CONVENE 12:40 p.m.

ADOPTION OF THE AGENDA

PUBLIC COMMENTS

Lisa Brooking, LMT provides initial training for Chiropractic Assistant applicants. She has taught the class on her own and at the Oregon School of Massage. She came before the Board to ask two questions 1) Can she teach the electrotherapy since it is not within her massage therapy scope, and 2) is it Necessary for her to provide a practical (hands-on) session in electrotherapy; she has been teaching the indications and contraindications. The Board does not require her to provide a practical session, and therefore there is no issue of practicing outside her LMT scope. As a practical matter though, she may be able to obtain a “guttet” machine for her teaching purposes (it was suggested that some manufacturers will donate such a machine).

DISCUSSION ITEMS

1. Strategic Plan discussion: Public Protection

Dave McTeague provided to the Board the 2006 complaint statistics and updated Strategic Plan.

Previously, the Board talked about maintaining a “compliance” statistic; Dave is prepared to define that with the Board’s direction. He will use that statistic in the performance measures. The Strategic Plan narrative has been updated. Dr. Vissers moved to accept the updated “Public Protections section of the Strategic Plan. Joyce McClure seconded the motion. Michael Megehee, aye; Cookie Parker-Kent, aye, Steve Koc, aye, Joyce McClure, aye, Michael Vissers, aye; and Minga Guerrero, aye.

2. **Administrative Rules Committee report: Advertising Rules and other advertising issues**

This topic is continued from the Board's November 2006 meeting. Dr. McClure reported on the Rules Committee's recommendation regarding Dr. Kim Privitera's proposed Advertising rule update. She drafted her proposal to try to deal with doctors who obtain reports from DMV and/or employ people to approach recent accident victims (a.k.a. "runners" or "cappers"). The goal is to insure that the public is properly served, that there is protection and that people are not being unduly taken advantage of who are not fully aware of the laws and liberties affect them in this regard. The Committee does not have a recommendation at this time.

Julio Cardona, DC, works in Gresham and is currently employed with Drs. Pratt and Privitera, presented their personal concerns on this matter. He was an insurance adjuster for eight years, and handled a slew of investigations in auto, bodily injury and property damage. He is very aware of the problem this issue poses for individuals that are more vulnerable in our community. "The main issue is the Latino community (targeted). They (runners) gain access to these reports and try to coerce or entice the Latinos to come to their clinic. "Coerced" because they may say, "If you don't come to this insurance company, your claim will be denied," or enticed because "When you come to this clinic, we will help you get a bigger settlement." Most of these people that this is affecting are not familiar with rules and regulations, or do not speak English; therefore, they have no way to gain that knowledge. In most Latino countries, "You don't get involved because most of the time something bad happens." So most people let things go by and deal with the day-to-day issues.

Dr. Cardona stated that there is a statewide grand jury report (from the State of Florida) and many other states have (anti-capper) laws. This evidence needs to be considered if the Board pursues some rule adoption. Mr. Cardona provided copies of the Grand Jury report to the Board for their review. Dr. McClure added that the most likely way for the Board to act or respond is if the patient or person forwards a complaint to the Board.

At this time, the Board is waiting for Dr. Privitera's lawsuit to conclude before it takes any action on this matter.

(The Board addressed Discussion items #4, and then #3)

4. **Policy Issue: ETSDP Committee report on EFPX-SCIO device, and Public Comment**

A number of people appeared desiring the Board's approval of this device for treatment beyond biofeedback.

Sandra Burns, DC presented before the Board. She stated that she currently uses the EFPX-SCIO biofeedback device and she is here today, because an IME challenged her use of the device and he feels it should be "investigative." She filed an application with, and received approval from, the Board for the standard use of the EFPX device (for biofeedback). This device returns numbers to indicate when a patient has received enough frequency. To Dr. Burns' knowledge, researchers are using a separate function of the machine for testing migraines, etc. with a low report of complaints. There is also current research being done at St. Johns Hospital in Missouri, focusing on migraines, myalgia and chronic fatigue.

Dr. Burns' specific request is that this machine be a biofeedback device. The Board's ESTDP committee already approved the device as a standard device as the FDA approved it. She is now submitting a second ETSDP application to obtain an "investigation" status for diagnose and

treatment. Dr. Burns believes that the research being done with the machine is likely utilizing the “other” functions of the EPPFX device, not the biofeedback.

Dr. Burns also purports that there is “very low risk to the public.” Dr. Guerrero added that potential harm or risk factors would be similar to microcurrent, except that this is “nanocurrent.”

Dr. Megehee asked Dr. Guerrero to poll the board members for their input on the use of this device as investigational for purposes beyond biofeedback. Dr. Megehee is in favor of its use for both biofeedback and investigational. Four of the members were uncertain about approving it for investigational purpose. Cookie did not feel she had enough knowledge yet to make a decision.

Dr. Guerrero suggested that Dr. Burns and others make a list for the ETSDP process disclaimers on which procedures they do not intend to use the EPPFX.

Judith Boothby, DC (*distributed a copy of her statement*) She too requested the board approve as “investigational” the EPPFX-SCIO device. Regarding the application process to determine “investigational” she believes that it should be as simple as if a DC made their own device, hooked it up to someone, and as long as it still remains low risk, it should be labeled investigational. It is also her belief that low risk things are not being studied, by being determined “low risk,” we have already protected the public.

James Aungst, DC, a member of the ETSDP Committee, stepped up to answer questions the Board may have about his previously submitted letter (opposing any approval other than standard for biofeedback). He is concerned about the potential for harm (or scamming) to patients - the three most questionable issues concern treating at a distance. In other words, radionics (patient need not be present in the room, city, or country), past life issues, and it also is supposed to be able to treat via a surrogate (i.e. diagnose and treat through the Mom to the baby).

Dr. Boothby agrees with Dr. Aungst in that we should put some limitations on the use of the device.

Lester Lamm, DC WSCC’s Vice President of Academic Affairs, commented on research process. According to Dr. Lamm, a hypothesis for research must be plausible. Dr. Lamm does not subscribe to using any intervention on a patient for a therapeutic value that has not demonstrated its efficacy prior to its use. The whole issue about investigational, take that route of research where patients are not put at risk, so you have randomized population, so you have data, so you have outcomes that are reliable, that provides you a direction to go. To call something investigational just to endorse its use in a clinical setting is an inappropriate direction to go.

In conclusion, Dr. Guerrero recommends bringing this topic back to the Board in March. Hold over.

3. **Policy Issue: Spinal Decompression/traction advertising claims**

This discussion is also continued from the November 2006 board meeting. The Board put out a press release questioning the use of “NASA medical break-through” claims, etc. Dave reported that since that time we have not received any information that the claims are supportable. He recommends that the Board make a specific determination that the “NASA medical break-through” (weightless in space cures back pain) claims are misleading, and/or that any reference to “NASA medical break-through” claims are misleading.

Dr. Jeffrey Tunick testified before the board; and stated that he uses decompression (traction; decompression is the outcome). There is no mystique about traction. He supports the Board's efforts to refute those claims.

Dr. Vissers moved to accept the policy language, which clearly identifies that the NASA claims are misleading. Dr. Megehee seconded the motion. Parker-Kent, aye; Guerrero, aye; Megehee, aye; McClure, aye; Koc, aye; and Vissers, aye.

Dave McTeague also added that he has identified a number of other questionable advertising claims. Megehee suggested printing an article in the BackTalk, "We have issues with these statements which appear to use misleading and deceptive statements, such as 'The answer,' 'the most promising treatment', etc." Dr. Tunick is willing to gather the users of the machine and educate them on appropriate advertising techniques, or to have them submit their evidence for their ad claims. Megehee made a motion to direct Dr. Tunick to perform this task and arrange a meeting; and the Board will address these further advertising issues at their next meeting after requesting supporting information from DCs making generic "medical breakthrough" and other claims (See February 16, 2007 press release). . Guerrero seconded the motion. Koc, aye; Parker-Kent, aye; Megehee, aye; McClure, aye; Vissers, aye; and Guerrero, aye.

5. Policy Issue: Laser/phototherapy for cosmetic treatments (continued from November meeting)
This discussion will be carried over to the March 2007 meeting.

6. Policy Issue: 2007 Legislative issues

Dave provided reports on legislation worthy of watching in addition to the OBCE's policy package bill (HB 2242). Additional bills include HB 2386 the Physical Therapists expansion bill, HB 2432 the Chiropractic Injure Workers Study, SB 357 Spinal Adjusting Educational Requirements, HB 2430 and SB 458 Expanded DC Access in Workers Comp, and lastly, SB 407 the Patient's Freedom of Choice bill. Good news is that the associations are working together on issues.

7. Policy Issue: Oregon School Activities Association & return to play authority

Ron Romanick DC has been working with WSCC and the Board to add chiropractic physicians to the OSAA's list of "appropriate health care professionals" for determining an athlete's ability to return to play after a head injury. Dr. Romanick sent an email to the Board on January 10, 2007 indicating that initial meetings with the OSAA and the MASC are positive. In addition, a February 4, OSAA Executive Board meeting was scheduled; Dr. Romanick will keep the Board informed of the outcome. Dave will pass on any further information to the Board.

8. Policy Issue: OBCE response to Workers Comp rulemaking

Linda Stockton, wife of Dr. Jordan Stockton brought this information to the Board. SAIF Corporation is proposing the Workers Compensation Department adopt rules, which tie the WC fee schedule to CMS NCCI Software Edits, which are used by the Medicare system. Dave provided the Board a copy of his letter to the WC Dept asking them to deny SAIF's request for rulemaking. Since that December 11, 2006 letter, Dave believes that the WC Dept is going to make some positive changes for chiropractors.

9. Committee Appointments

Cookie Parker-Kent moved to appoint the following chiropractors as peer review committee members; Drs. Ann Goldeen and Ron Romanick will serve as primary (regular) members, and Drs.

James Wallace, Dean Clark and Tom Freedland serve as alternates (in the order listed). Joyce McClure seconded the motion. Koc, aye; Vissers, aye; Guerrero, aye; McClure, aye; Parker-Kent, aye; and Megehee, aye.

10. FCLB/NBCE alternate delegate appointment

Dr. Megehee is resigning as the Board's NBCE alternate delegate as he has too many other commitments at this time; Dr. McClure volunteered to serve as the new alternate delegate. Minga moved to appoint Joyce McClure as the OBCE's alternate NBCE delegate; Vissers seconded. Koc, aye; Megehee, aye; Parker-Kent, aye; Vissers, aye; Guerrero, aye; and McClure, aye.

11. Staff Report

Dave has nothing further to add other than the scheduling of our March 15, 2007 meeting in Salem.

3:00 pm **ADJOURN** to Executive Session

4:20 p.m. **RECONVENE** to conclude In the Matters of...

IN THE MATTER OF

David Wichman, CA applicant (06-5008)

The Board determined to issue a Consent Order with stipulations, which allows the applicant to certify as a chiropractic assistant. Joyce McClure moved to accept the Board's determination; Cookie Parker-Kent seconded the motion. Megehee, aye; Vissers, aye; Koc, aye; McClure, aye; and Parker-Kent, aye. Guerrero abstained.

Theresa Stein, CA applicant (07-5000)

The Board also determined to issue a Consent Order with stipulations and a requirement to submit to two random Urine Analyses over a one-year period. Upon signing the Consent Order, the applicant may obtain her chiropractic assistant certification. Cookie Parker-Kent moved to accept the Board's determination; Steve Koc seconded the motion. Koc, aye; McClure, aye; Megehee, aye; Vissers, aye; Parker-Kent, aye; and Guerrero, aye.

Cases 06-1018 and 06-3000

The Board found no statutory violation. Minga Guerrero moved to accept the Board's determination; Cookie Parker-Kent seconded the motion. Vissers, aye; Megehee, aye; Koc, aye; McClure, aye; Parker-Kent, aye; and Guerrero, aye.

Cases 06-1051 and 06-1056

The Board determined to withdraw its earlier November 2006 Notice of Discipline and found insufficient evidence to find a violation in this case. The Board finds it necessary to issue a Letter of Concern, however, to the licensee regarding his failure to put identifiers on his charts. Michael Vissers moved to accept the Board's determination; Cookie Parker-Kent seconded the motion. Koc, aye; McClure, aye; Vissers, aye; Guerrero, aye; Megehee, aye; and Parker-Kent, aye.

Case 06-1043

The Board determined insufficient evidence to find a violation. Again, the Board determined that a Letter of Concern. Cookie Parker-Kent moved to accept the Board's determination; Steve Koc seconded the motion. McClure, aye; Vissers, aye; Koc, aye; Megehee, aye; Guerrero, aye; and Parker-Kent, aye.

Case 06-1049

The Board determined insufficient evidence to find a violation. The Board will issue a Letter of Concern, and the Board will assign a new complaint # for alleged chart note violations. Joyce McClure moved to accept the Board's determination; Cookie Parker-Kent seconded the motion. Koc, aye; Megehee, aye; Vissers, aye; Guerrero, aye; Parker-Kent, aye; and McClure, aye.

Case 06-1025

The Board determined insufficient evidence to find a violation. The Board will also issue a Letter of Concern. Michael Vissers moved to accept the Board's determination; Steve Koc seconded the motion. McClure, aye; Megehee, aye; Koc, aye; Vissers, aye; Guerrero, aye; and Parker-Kent, aye.

Case 07-1002

The Board determined insufficient evidence to find a violation. Joyce McClure moved to accept the Board's determination; Minga Guerrero seconded the motion. Megehee, aye; Vissers, aye; Koc, aye; McClure, aye; Parker-Kent, aye; and Guerrero, aye.

Case 06-2003 Caleb Craig, DC

For violations of practicing without a license, the Board determined to issue a Letter of Reprimand with a civil penalty in the amount of \$1000. Steve Koc moved to accept the Board's determination; Joyce McClure seconded the motion. McClure, aye; Vissers, aye; Koc, aye; Megehee, aye; Guerrero, aye; and Parker-Kent, aye.

4:35 p.m. ADJOURNED