



# Oregon

John A. Kitzhaber, M.D., Governor

## Oregon Board of Chiropractic Examiners

3218 Pringle Road SE, Suite 150

Salem, Oregon 97302-6311

(503) 378-5816

FAX (503) 362-1260

E-mail: [Oregon.obce@state.or.us](mailto:Oregon.obce@state.or.us)

[www.oregon.gov/OBCE](http://www.oregon.gov/OBCE)

### **PUBLIC MEETING MINUTES**

3218 Pringle Road SE

2<sup>nd</sup> Floor Large Conference Room

Salem, OR 97302

**January 20, 2011**

#### **Members Present**

Joyce McClure DC, President

Michael Vissers DC Vice-President

Cookie Parker-Kent, Secretary, Public Member

Daniel Coté DC

Ann Goldeen DC,

Huma Pierce DC

Douglas Dick, Public Member

#### **Staff Present**

Dave McTeague, Executive Director

Kelly Beringer, Admin Asst

Donna Dougan, Admin Asst

Tom Rozinski, Investigator

Lori Lindley, Assistant AG

**Others Present:** Lester Lamm DC, Frank Moscato, Joseph Pfeifer DC (Vice President of Clinics at UWS), Gary Schultz DC (Vice President of Academic Affairs at UWS), Jason Young DC, Minga Guerrero DC, Sharron Fuchs DC, Christina Jaderholm, Nicole Krishnaswami (OMB Policy Analyst), Siamak Shirazi LAc, Ellen Shefi LAc (OMB Acupuncture Advisory Committee), Christo Gorawski LAc (OAAOM) and Mona Searles LAc, (OAAOM)

**CONVENE 8:30 a.m.**

**ADOPTION OF THE AGENDA** Adopted as presented.

#### **PUBLIC COMMENTS**

**Licensing.** Christine Jaderholm, a DC applicant, appeared to discuss with the Board her qualifications for licensure (she did not graduate from a [USA] CCE accredited college). Dr. Vissers pointed out that the statute prohibits her licensure, not any personal decision by the Board. She thought the “rule” allowed the Board to have discretion to determine her eligibility. Again, Dr. Vissers said the board is following the direction of its legal counsel. Ms. Jaderholm’s father, Dr. Hans Andersen commented on her behalf.

#### **DISCUSSION ITEMS** *(in order discussed)*

##### **2. Policy issue: Dry needling – Public Comment and Board Discussion**

Gary Shultz, DC Vice President of Academic Affairs at UWS – Dry needling as a technique for the evaluation and management of trigger points is taught within the core curriculum at UWS. He found at least one dozen courses within the core curriculum that deal with issues related to that procedure, whether or not they specifically relate to dry needling by name in that particular context.

Joseph Pfeiffer DC Vice President of Clinics at UWS – the two most salient, clinical issues are efficacy and safety. The efficacy is not really in question; the effectiveness of the treatment is dependent upon the accuracy of the needling relative to the location of the trigger point. That suggests practitioners highly skilled in

palpation, and the identification of soft tissue abnormalities associated with trigger points are in a better position to achieve higher outcomes. By virtue of their training and experience DCs possess all the knowledge necessary to identify the necessary precautions.

Lester Lamm DC provided a second packet of information to the board. He made reference to the fact that WA State Labor and Industries recognizes dry needling as a valid procedure and provides CPT codes for billing; however, they do not cover acupuncture services (his point being that the two are not one in the same). Dr. Lamm provided a copy of the World Health Guidelines for basic training of physicians; they recommend 200 hours to practice acupuncture. MN statutes recommends 100 hour certificate in acupuncture to practice (the acupuncture opponents say over 600 hours should be required for dry needling). A letter from CCACOM says “any intervention beyond dry needling” is acupuncture. From OCOM, “anything beyond trigger point therapy is acupuncture.” OBNE allows dry needling with only two hours CE. He listed other 2-3 day programs which teach dry needling to (a long list of) other professionals.

Frank Moscato AAL provided a hand out (red folder) and spoke from the courts view. He quotes ORS Ch. 684.025(2) “Neither this section, nor ORS 684.010 authorizes the administration of any substance by the penetration of the skin or mucous membrane of the human body for a therapeutic purpose.” If the court looked at the word substance, it would look for the definition within other statutes, and when one is not found it would refer to the common accepted definition, and they will view 684.010(4). It infers a substance is a drug. The court would conclude that DCs are precluded from applying substances by needle, not from performing trigger point dry needling. He thinks the courts would clearly say this is within the DC scope of practice. In addition, NCMIC would offer the malpractice coverage.

Siamak Shirazi L.Ac. OMB AAC member, although speaking as an acupuncturist, says 93% of points used in trigger point therapy are acupuncture points. There are two dimensions to providing this therapy – the physiological and energetic aspects. He does not question a DC’s competency in the physiological part; his concern is the energetic part (“chi”) of the treatment. Every time you use an acupuncture point, you create a synergy; lack of training in this regard is his concern. Dave McTeague noted that the NDs practice with a minimal amount of training, and asked him to respond. He is aware that NCNM has a very extensive program and he thinks it is a great one. Dr. Coté added that we would definitely make sure that the protocols are in place to ensure that licensees are qualified to perform the trigger point dry needling

Nicole Krishnaswami OMB Policy Analyst – at the OMB’s recent board meeting it maintains its opinion that dry needling is acupuncture. The tool is the same, the points are largely the same, the purpose - treatment of pain management - is the same, the technique and the insertion of the needles - is the same. The theory behind it does not change the practice of it. Dry needling is acupuncture which is regulated by the OMB and requires the license from the OMB. Dr. Vissers asked her to respond to Dave McTeague’s question about NDs performing dry needling. She was not aware that NDs practice dry needling. From the OMB’s point resolution for public protection may be “total exclusion, or we can have a dialogue about an acceptable training program like NCNM’s.” In answer to Dr. Vissers, she said the board would need to ensure that education and safety measures were designed prior to any meeting of the minds.

Ellen Shefi L.Ac., LMT OMB AAC member. She appreciates the board’s concern about safety. They want to safeguard the public that DCs are competent, well-educated and have appropriate CE. The OMB AAC doesn’t feel that you can learn all the (93% of 255) points to be safely implementing dry needling. Of her many references for minimum training, the State of Maryland referenced a minimum of 200 hours to perform dry needling. She closes saying her concerns are training, insertion of the needles, and the advertising of this therapy.

Mona Searles NP, L.Ac. OAAOM She feels that this whole issue is money related. She mentioned a statement by OMB AAC member, Gene Hong MD that he suggested a tiered system in which a DC who finds dry needling to be helpful, can be ushered into a broader application (dry needling?). She continued ...our boards could work together. There are two excellent universities in the state why not ask them to help usher DCs into this training. It may require a political maneuver to get the acupuncture support in the state of Oregon.

Christo Gowarski L.Ac. Repeated the statement that dry needling is the same as acupuncture as quoted by Marvin Finkelstein in the Willamette Week article. Mr. Gowarski feels the OBCE is biased – trying to get into dry needling (acupuncture), and do it cheaply. He referred to a letter and instruction manual both describing the dry needling technique and needles used. He said acupuncture needles are not used for dry needling...Hypodermic needles, used with dry needling, require more skill and knowledge to use. Please provide the proper training.

Minga Guerrero DC past president of the OBCE. She is in favor of dry needling as part of the DC scope. She encourages the Board to set the educational standards for performing this procedure. She cited multiple other professions (L.Ac., ND, PT ) with less hours education (than the DC degree) which are allowed to perform dry needling.

Sharron Fuchs DC In 28 years in the personal injury field, she has never seen a case of malpractice regarding a DC and acupuncture or dry needling. To state that trigger points are related to acupuncture points is wrong because we have to use our palpatory skills to find the trigger points and she does not use an acupuncture chart at all. Dr. Fuchs presented her model of an informed consent. She added that William Hartje DC asked the Board of Naturopathic Examiners in 2009 whether dry needling was in their scope and they recently responded in the affirmative. OBNE also just passed a rule that performing this technique requires two hours in trigger point injection therapy.

Dr. McClure closed the floor for comments on this discussion.

**10:20 AM Break.**

**10:30 AM Reconvene after 10 minute break.**

Dr. Coté is ready to make a motion. We've discussed this since March 2010.

**Motion 1:** Dr. Cote made a motion that dry needling is within our scope of practice for the treatment of myofascial triggerpoint and that we should create a certification with minimal educational standards and a board registry. It seems appropriate to send it to our RAC committee. Ann Goldeen seconds the motion.

Discussion: Lori Lindley suggested the board review Dave McTeague's options – to adopt either a policy or go into permanent administrative rule.

Dr. McClure suggested the need for both core curriculum and post-graduate education. We need RAC to determine how many hours are needed for pediatric, or geriatric training, and any number of practical hours. What is the dry needling definition a chiropractor would use, and how would a patient refer to that technique so it is clear that this procedure is not acupuncture. Dr. Goldeen suggested creating a registry of licensees who plan to do dry needling. All of this would be part of the certification. Dr. McClure asked the Board who best can determine what appropriate and current training is. Members agreed UWS, and recommend they provide a representative to the RAC. Dr. McClure also suggested maintaining a pre-approved list of educators for the education. Members discussed whether additional CE would be required after initial certification.

Dave asked if the Board wants a required Informed Consent including language such as, “This is not acupuncture” or the DC is not representing that they are performing acupuncture. Advertising of the procedure would be considered. A full packet of the dry needling information will be made available to the RAC members.

Dr. Coté and Dr. Goldeen withdrew their motion and second for a clearer motion.

**New Motion 1:** Dr. McClure moved that dry needling of myofascial trigger points is within the scope of chiropractic practice and requires specific training for current graduates and practicing physicians. The amount and nature of training will be determined by the Rules Advisory Committee in preparation for a rule and public hearing. Use of dry needling by a chiropractic physician will require informed consent and clarification that dry needling is distinct from acupuncture. Chiropractors who have completed and successfully passed education requirements for the practice of the dry needling technique will be registered with the Board and provide *proof of completion of the basic Board approved course before engaging in the practice of dry needling*. Dr. Coté seconded the motion. All in favor. Pierce, aye; Vissers, aye; McClure, aye; Goldeen, aye; Dick, aye; Parker-Kent, aye; and Coté, aye.

**Motion 2:** Dr. Coté made a second motion to go into permanent rulemaking for the process of creating a certification and registration program for dry needling in Oregon. The OBCE will refer the matter to its RAC. Doug Dick seconded the motion. All in favor. Parker-Kent, aye; Coté, aye; Pierce, aye; Vissers, aye; McClure, aye; Goldeen, aye; and Dick, aye.

**Motion 3:** Dr. Huma Pierce moved that licensees may not provide this therapy until the rule has been adopted. Ann Goldeen seconded the motion. All in favor. No further discussion. Dick, aye; Parker-Kent, aye; Coté, aye; Pierce, aye; Vissers, aye; McClure, aye; and Goldeen, aye.

**11:15 AM Break**

**11:30 AM Reconvene**

## **5. CA Initial Training Course (ITC) requirements**

Dr. Jason Young appeared to discuss the development of the CA standard training. Dr. Young, a Corvallis DC, and previously an instructor at the Oregon School of Massage, is now a board-approved trainer for the OBCE's ITC. He brought up the matter of chiropractors using CAs for massage therapy - at great risk to the DC and patient. Dr. Young suggests the board consider removing massage therapy from the CA duties, and/or creating an additional certification for performing massage. Dr. Vissers added that the board had spoken of a tiered CA license before. Dr. Young continued. It does take additional training to provide therapeutic massage. Are CAs trained to do an assessment, or put together an hour long routine? He doesn't think so because they are practicing under the DC, who is responsible. In order for the massages to be therapeutic, there needs to be a higher standard of training. In addition, he does not think CAs are qualified to perform relaxation massage.

There is a variety of massage techniques that aren't aimed at specific therapeutic goals as such is chiropractic. The Board might want to explore some limitations as to the intent, purpose and techniques that are used by a chiropractic assistant. If we are focusing on the whole State of Oregon, it may be beneficial to create a shorter course so someone can get a CA “massage certificate” to incorporate that into their practice. HIPAA is not required in the basic CA training.

Dr. Coté is not enthused about CAs performing massage; it's so easy to hire a massage therapist. Dr. Coté says it would be better to create a “massage technician” status (additional massage training) or hire an LMT. It is a

public protection issue. Dr. McClure prefers that we not drop the massage as part of the CA's duties; Drs. Vissers and Cote agree; don't drop it, but create that requirement of a "massage technician license" or use an LMT. Dr. McClure asked if we would propose this as another rule issue.

As a matter of efficiency and convenience (thinking of people outside the Willamette Valley), and the RAC discussed this.... Dr. Young would like to see the Board allow the didactic portion to be online. People are travel hundreds of miles for the training (now 12 hours) so they can get a job for minimum wage. If we could put that component online, and set good high standards, the applicant could get the didactic portion done.

The Board reviewed the multiple topics submitted by current initial trainers, and other interested persons for creation of a minimum standard. The Board determined that the following areas need to be addressed in the eight hour didactic portion of the training:

Licensing & Regulation	Draping
Scope of practice	Patient Positioning
Duty to Report	HIPAA
Principles of Chiropractic	Sanitation
Basic Medical Terminology	Basic Anatomy
CPT Timed Codes & General Chart Noting,	Spine, muscles, bone
an understanding of	Phases in treatment and healing
Boundaries	Indications and Contraindications

Board members will review the drafted list by email and consider the length of time some or all portions must be taught. Board members expect that any massage training would be in the practical training.

Dr. Young will continue the conversation with Dave McTeague about creating a "massage technician" certification.

## **12:00 PM Working Lunch**

### **1. Policy Issue: Discipline Consistency/Matrix**

The Board talked about this matter at the November meeting, but did not conclude its discussion about disciplinary sanctions. Dave McTeague presented reports of sanctions for boundary and sexual misconduct for the OBCE and the Oregon Medical Board.

If the Board, as discussed in November, wants to change its bottom line, it needs to put out a statement (e.g. in the BackTalk) that the Board is taking a new stand on how it will be addressing these sanctions. Dave recommends a motion to validate a change.

Michael Vissers made a motion to adopt a stronger stand for the serious violations (i.e. boundaries and sexual misconduct). Joyce McClure seconded the motion. Discussion: After review of other boards' sanctions of boundary violators, and the continued receipt of these types of complaints, the Board determined today that it will be more aggressive in issuing its sanctions to better protect the public. This determination will bring its sanctions into line with other regulatory boards. Lori Lindley asked for clarification; what exactly is the Board proposing to do differently? Use the discipline model or what? Dave will work on the fine details of the statement. The board will implement the discipline matrix which will create more consistency. All in favor. Goldeen, aye; Dick, aye; Parker-Kent, aye; Coté, aye; Pierce, aye; Vissers, aye; and McClure, aye.

### **6. Policy Issue: CE courses (Language courses)**

Dr. Coté opened this discussion. Staff asked whether a DC may get CE credit for attending a Spanish Language course; there was a time the OBCE had allowed credit for these classes. Board members agree that language courses do not qualify for CE credit according to the 811-015-0025 rule guidelines. Note: if a language course is geared towards medical terminology, the board is willing to allow credit.

### **3. 2010 Complaint Statistics**

Briefly reviewed.

### **4. Probation Requirements**

This discussion is carried forward from November 2010. Dr. Goldeen was reporting from the FCLB conference and this matter stood out – the requirement that a licensee appear before the board just prior to the completion of their probation. Daniel Coté moved to accept the board's determination to require an appearance before the full board in order to be released from a licensee's probation. Dr. Goldeen seconded the motion. All in favor. Pierce, aye; Vissers, aye; McClure, aye; Goldeen, aye; Dick, aye; Parker-Kent, aye; and Coté, aye.

Dr. Coté added that a licensee should have their fine paid off by the end of their probation. Discussion ensued. This may be difficult, however Dave posed the idea that licensees may not renew their license until any debt is paid. Lori Lindley will draft some language about payment of fines in relation to ending the probations.

### **7. Staff Report**

Dave wished outgoing staff member Katie Hamblen well. Dave reminded the Board that the 2011 Legislative Session will be convening (February 1, 2011). There has been one legislative proposal which affects the OBCE already for cultural competence CE for all health related professionals. The ETSDP committee is meeting Thursday February 24 by phone to talk about Thyroid treatment. Dave does not have a recommendation for 2011 meeting dates. Cookie Parker-Kent will remain for a second term. Todd Bilby DC and Christine Robinson DC are willing to apply for the upcoming board member openings. We also have openings for Peer Review and Board.

### **Election of Board officers, FCLB/NBCE Delegate/Alternates, Board committee assignments**

- President: Doug Dick nominated Ann Goldeen as President; Huma Pierce seconded the motion. All in favor.
- Vice President: Cookie Parker-Kent nominated Daniel Coté as Vice President; Ann Goldeen seconded the motion. All in favor.
- Secretary: Michael Vissers nominated Huma Pierce for Secretary; Cookie Parker-Kent seconded the motion. All in favor.

Vote for three motions above: Daniel Coté, aye; Huma Pierce, aye; Michael Vissers, aye; Joyce McClure, aye; Ann Goldeen, aye; Doug Dick, aye; and Cookie Parker-Kent, aye.

In addition, the Board voted for FCLB and NBCE delegates and alternate delegates. Ann Goldeen will be the FCLB delegate, Daniel Coté will be the alternate. All in favor. Daniel Coté will be the NBCE delegate and Huma Pierce will be the alternate delegate All in favor. Board vote: Daniel Coté, aye; Huma Pierce, aye; Michael Vissers, aye; Joyce McClure, aye; Ann Goldeen, aye; Doug Dick, aye; and Cookie Parker-Kent, aye.

Dr. Joyce McClure passed the President's gavel to Ann Goldeen. Michael Vissers and the board applauded Dr. McClure for her great leadership these past six years (her second term expires May 2011).

**1:15 PM      ADJOURN PUBLIC SESSION TO EXECUTIVE SESSION**

**4:40 PM RECONVENE PUBLIC SESSION**

**IN THE MATTERS OF**

**Susan Gray DC** (case #2010-2002)

The Board proposed to create a new Order with new conditions for Dr. Gray. She must get a mental health status report, make payments to her patient, and create a plan to achieve her goals. Ann Goldeen moved to accept the Board's determination; Daniel Coté seconded the motion. All in favor. Vissers, aye; McClure, aye; Goldeen, aye; Dick, aye; Parker-Kent, aye; Coté, aye; and Pierce, aye.

**Continuing Education: CE Audit, continued**

*(The Board had originally issued proposed notices for two licensees not responding to the Oct/Nov 2010 CE audit. However, immediately after the board's determination (11/22/10) both licensees submitted a response. Staff requested the Board to reconsider their original determinations.)*

**3A – Scott Gates DC** After discussion, the Board determined to amend its Notice and fine Dr. Gates a \$250 penalty for a late response to the CE Audit. Daniel Coté moved to accept the board's decision; Huma Pierce seconded the motion. All in favor. Dick, aye; Parker-Kent, aye; Coté, aye; Pierce, aye; Vissers, aye, McClure, aye; and Goldeen, aye.

**3B – Timothy Swindler DC** After further discussion, the Board proposed a \$250 penalty for failure to notify the Board of his change in address, and for his late response to the CE audit. Doug Dick moved to accept the Board's determination; Cookie Parker-Kent seconded the motion. All in favor. Coté, aye; Pierce, aye; Vissers, aye; McClure, aye; Goldeen, aye; Parker-Kent, aye; and Dick, aye.

**Patricia Carlin, CA Applicant**

The Board determined to issue the CA license with stipulations that she must disclose the convictions to her future employer/s. Michael Vissers moved to accept and Doug Dick seconded the motion. Daniel Coté is recused. Parker-Kent, aye; Pierce, aye; Vissers, aye; McClure, aye; Goldeen, aye; and Dick, aye.

**Case # 2010-1027** The Board proposed to issue a Case Closed. Daniel Coté moved to accept and Cookie Parker-Kent seconded the motion. All in favor. Coté, aye; Pierce, aye; Vissers, aye; McClure, aye; Goldeen, aye; Dick, aye; and Parker-Kent, aye.

**Case # 2010-1031 Gustav Schefstrom DC**

The Board proposed to issue a notice for 48 remedial training hours in x-ray technique, reports, informed consent and may not interpret any x-rays until that training is completed, and one year mentoring Dr. Schefstrom may only *evaluate* an x-ray report if someone else has previously created the report. If licensee does not pay his mentoring fees within 30 days of the signed Order, his license will be suspended. The Board will report this case to the Oregon Radiation Protection Services. Joyce McClure moved to accept the Board's determination; and Cookie Parker-Kent seconded the motion. All in favor. Goldeen, aye; Dick, aye; Parker-Kent, aye; Coté, aye; Pierce, aye; Vissers, aye; and McClure, aye.

**Case # 2010-1032 Ross Hart DC**

The Board proposed to assess a \$500 fine (payable within 6 months of the signed Order) for record keeping. Daniel Coté moved and Huma Pierce seconded the Board's determination. All in favor. Vissers, aye; McClure, aye; Goldeen, aye; Dick, aye; Parker-Kent, aye; Coté, aye; and Pierce, aye.

**Case # 2010-1034 Daniel Cook DC**

The Board proposed to issue a 90-day suspension, up to \$5000 restitution for counseling expenses for the patient, the PROBE course, three-year probation, and a chaperone for gowned female patients. Doug Dick moved and Michael Vissers seconded the Board's determination. All in favor. McClure, aye; Goldeen, aye; Dick, aye; Parker-Kent, aye; Coté, aye; Pierce, aye; and Vissers, aye.

**NEW MATTER:** Relating to the above case, the Board will open a new complaint against the licensee who did not report a violation of which he was aware (Duty to Report).

**Case # 2010-1035** The Board determined Case Closed with a strongly-worded Letter of Concern. Huma Pierce moved and Doug Dick seconded the Board's determination. All in favor. Parker-Kent, aye; Coté, aye; Pierce, aye; Vissers, aye; McClure, aye; Goldeen, aye and Dick, aye.

**Case # 2010-2006** The Board proposed to issue a Letter of Concern to the licensee, and Case Closed. Ann Goldeen moved and Joyce McClure seconded the Board's determination. All in favor. Dr. Goldeen will help staff with the letter. Dick, aye; Parker-Kent, aye; Coté, aye; Pierce, aye; Vissers, aye; McClure, aye; and Goldeen, aye.

**Case # 2010-5004 Del Schaeffer DC**

The Board proposed to suspend the license for failure to pay taxes as required by statute and recommended by the Administrative Law Judge. Ann Goldeen moved and Cookie Parker-Kent seconded the motion. All in favor. Coté, aye; Pierce, aye; Vissers, aye; McClure, aye; Goldeen, aye; Dick, aye; and Parker-Kent, aye.

**Case # 2010-2002 Daniel Beeson DC**

The Board proposed to issue a \$5000 civil penalty (due within 6 months of the signed Order), a Letter of Reprimand, three-year probation and random file pulls for overtreatment and below standard chart notes. Michael Vissers moved and Cookie Parker-Kent seconded the Board's determination. Joyce McClure is recused. Goldeen, aye; Dick, aye; Parker-Kent, aye; Coté, aye; Pierce, aye; and Vissers aye.

**Case # 2010-2000 Christopher Beardall DC**

The Board proposed to issue a notice for below standard record keeping for a \$5000 civil penalty, three-year probation, sixteen hours continuing education, random file pulls for two years, and a board appearance at least once during the two years. Cookie Parker-Kent moved to accept the Board's determination and Daniel Coté seconded the motion. Pierce, aye; Vissers, aye; Goldeen, aye; Dick, aye; Parker-Kent, aye; and Coté, aye. Joyce McClure was not present for the vote.

**Case #s 2010-1020 & 2010-1021 Dorian Quinn DC**

The Board proposed to issue a Letter of Reprimand for incomplete records, improper advertising, violation of the doctors title act, violation of existing voluntary compliance. The board proposed a \$5000 civil penalty, and random file pulls over two years. Daniel Coté moved and Michael Vissers seconded the Board's determination. McClure, aye; Goldeen, aye, Dick, aye; Parker-Kent, aye; Coté, aye; Pierce, aye; and Vissers, aye.

**ADJOURN 4:50 PM**