



# Oregon

Theodore R. Kulongoski, Governor

## Oregon Board of Chiropractic Examiners

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Western States Chiropractic College  
Hampton Hall Conference Room  
2900 132<sup>nd</sup>, Portland, Oregon

## PUBLIC SESSION

July 19, 2007

8:40 a.m.

<b>Members Present</b>	<b>Staff Present</b>
Minga Guerrero, DC President	Dave McTeague, Executive Director
Michael Vissers, DC Vice-President	Kelly Bird, Administrative Assistant
Joyce McClure, DC Secretary (teleconferenced)	Michael Summers, Investigator
Steve Koc, DC	Lori Lindley, AAG
Michael Megehee, DC	Jane Billings, Administrative Assistant
Cookie Parker-Kent	
<b>Others Present:</b> Judith Boothby, DC, Sandra Burns, DC, James Aungst, DC, Sharron Fuchs, DC, Geoff Guilfooy, and Juerg Kunz, Medical Policy Analyst, WCD	

### **ADOPTION OF THE AGENDA**

The agenda was adopted with one item added – Accident Solutions’ advertising (Joyce McClure DC)

### **PUBLIC COMMENTS**

Drs. Sandra Burns and Judith Boothby appeared before the Board regarding Correspondence #4. See the discussion below.

*(Agenda items were not discussed in the order of the agenda.)*

### **DISCUSSION ITEMS**

#### **1. FCLB/NBCE Annual Meeting - Dr. Guerrero reports**

Drs. Joyce McClure and Minga Guerrero attended this meeting. No great upheaval discussions. Oregon stood out in the advertising arena. Joyce and Minga did a breakout session on the decompression units and deceptive advertising; it was the best attended. Many states were anti-decompression, but Minga explained that we were concerned about deceptive advertising not use of the machine. The ACA has a web link on coding and fraud related to decompression.

There was a great deal of interest in runners and cappers; there were definite indications that this is really going on. There was much routine (for the FCLB) discussion otherwise.

#### **2. Strategic Planning/Retreat discussion, Stakeholder survey**

9:15 a.m. Geoff Guilfooy, the Board’s contracted meeting facilitator, appeared to discuss the Board’s September 2007 Strategic Planning Session. Dave introduced him and briefly described his work experience to the Board.

Mr. Guilfooy gave an overview of how to determining whether the board needs a strategic plan review. The Board needs to look at its key goals and issues. Things such as changes in the healthcare industry, issues that have come out of the recent legislature affects. Secondly you want to reaffirm the goals and missions of the Board. You will use that information to lay out a work plan. There are performance measures the Board needs to do. So we will talk about how you measure that and how you are accomplishing that.

The Board has two tasks to complete before the retreat - first is the need to complete an online survey which Dave and he will develop. It will give us a great deal of information for goal setting. Secondly, board members will be asked to interview one or two prime stakeholders who are impacted by the work that the Board does.

*(Dr. McClure joined the meeting by teleconference.)*

At this time the Board briefly discussed a change to the date of the planning session/board meeting. Drs. Guerrero, Vissers and Megehee were willing to change the date. After discussion, the Board agreed that September 28-29 was the most accommodating time (Neither Kevin Shuba or Lori Lindley will be able to attend).

Board members each identified who they will contact. Dr. Guerrero will contact Gordon Compton of the NCIP and a democrat legislator; Joyce McClure, past board members; Michael Vissers, Republican legislator and Rees Sailors (Governor's Health Policy Advisor); Steve Koc will contact ODOC and Dr. Michael Freeman; Michael Megehee will contact WSCC's Joseph Brimhall and Senator Dave Nelson; and Cookie Parker-Kent will contact the CAO. Other possible stakeholders to contact may include both the Physiotherapy and Massage Therapy Boards (*Kevin Shuba agreed to contact these two boards*). Dr. Guerrero will also contact the Board of Medical Examiners and Dr. Koc will contact the Naturopathic Board. Vissers will ask Dr. Vern Saboe who to contact at MLAC (Workers Comp department's Management Labor Advisory Committee).

Suggested questions to ask the stakeholders – what are the issues the board faces; what should our top goal be, what should we do differently; and what do we do well? Dave noted that information from past Strategic Planning and surveys will be provided to the Board.

Dave asked about inviting past board members, or key peer review members. The consensus was to keep the attendance to only board members.

### **3. Policy Issue: 2007 Legislature recap**

Dave reported. Senate Bill 717 addressing scope of practice issues did not pass. House Bill 2756 did pass as a result of lobbying by the two chiropractic associations and other trade associations. Juerg Kunz, and now a Medical Policy Analyst for the Workers Compensation Department addressed the Board. The new WC bill will go into effect January 2, 2008. It does require any chiropractor to certify (reading a packet of information) with the director of the Dept of Consumer and Business Services before they can provide any compensable medical services to Oregon Work Compensation patients. (The certification does not expire.) WCB is hoping to have an online version of the certification material ready in September. (*The OBCE will place a direct link on its website to the WC certification.*)

The key benefit is that a chiropractor may be the attending physician for up to 60 days or 18 visits; however, the days/visits need to be “shared” between these other health professionals – i.e. physician’s assistant, physical therapists, and podiatrists. The tracking of the days/visits could be very complicated. For example, if a patient goes to see an MD, and that MD refers the patient for care to the PA, the clock starts.

Lastly, Mr. Kunz stated that up to now, while you had the attending physician status, you could make impairment findings; however, this new bill takes this away.

Dave concluded with other legislative issues; the OBCE’s budget bill and policy bill both passed (including the emergency use of oxygen, the license status change of “Limited Active” to “Senior Active”). Physical therapists portal of entry status increased from 30 to 60 days.

**Added Agenda Item- Accident Solutions** Dr. McClure brought up an advertising matter regarding Accident Solutions (AS). AS has a doctor to pay \$10,000 for four months advertising in which time they guarantee 80 leads; if the doctor does not get the leads in that period of time, then he/she can get some money back on a prorated basis, or can extend the period of the contract until the 80 leads are met. At one point, potential patients call a telephone number, not knowing they are calling a chiropractor. Joyce asks if this is a violation of the fee splitting rule? There was a consensus that this is fee splitting (or buying patients). Dave asked Lori Lindley to pull up a previous opinion –one addressing a matter concerning the Injury Accident Network. Carry this issue forward to the September board meeting.

#### **4. Policy Issue: Laser/phototherapy for cosmetic treatments**

In a letter to the Board, Mark Jewell, MD asked whether BOTOX injections or Restylane (for cosmetic surgery) is allowed within the scope of practice. In Dave’s initial letter to Dr. Jewel he informed him that it is not allowed within the scope of practice; board members agreed with this response.

In answer to a second question by Jewell, can DCs use lasers for cosmetic treatment of skin conditions? The Board is currently reviewing this matter; however, if the technique were taught at a chiropractic college, it may be allowed within the scope of practice. WSCC is not teaching cosmetic therapy, and Dave is still waiting for responses from other chiropractic colleges. The consensus was to let Dave’s letter stand.

The Board agreed to stay with Dave’s answer to Dr. Jewell’s third question (“Can a chiropractor provide oversight to other licensed mid-level providers such as nurses, nurse practitioners, or PA’s who could perform these treatments within their scope of practice?”), DCs can provide direction to RNs for those procedures that are within the chiropractic scope of practice, and Physician’s Assistants operate under the jurisdiction of the Board of Medical Examiners. Michael Vissers made a motion to table the cosmetic laser treatment until further information is provided. Joyce McClure seconded the motion. All in favor. Parker-Kent, aye, Guerrero, aye; Megehee, aye; Shuba, aye; Vissers, aye; McClure, aye and Steve Koc, aye.

(Joyce McClure disconnected her call after discussion #4)

#### **5. Policy Issue: Fee-splitting policy, Stark Laws, independent contractors etc.**

Dr. Guerrero has received a number of questions asking about hiring independent contracting (massage therapists or chiropractors). There is a PR group that are telling DCs, “if you hire a massage therapist or chiropractor, that that is fee splitting when they are working for you; they are also told that they are violating the Stark laws particularly when it concerns Medicare (there is a minor technicality in the law). If you have a vacation relief or associate doctor in your office and they see a Medicare patient, and you

have an agreement that you pay them a percentage of the collections, you may be violating the laws on fee splitting. The recommendation was that the DCs should be hired as employees to avoid this violation; not necessary.

Minga wants permission from the Board to mail a letter. The board made changes: include the Internal Revenue Service's "20-Factor Test" to determine the employer's control of the employee/contractor. The letter should point out that this response only applies to an interpretation of our OARs and board policy regarding fee splitting. Dr. Guerrero will share her final draft with members before she sends it.

#### **6. Policy Issue: Foreign DC applicants**

An applicant inquired about applying for licensure in Oregon; the problem is that he graduated from a chiropractic college with no CCE or CCEI (international) accreditation as required by Oregon statute and rule. The Board determined that the applicant's only choice is to apply and transfer his chiropractic education to a CCE accredited college, retake some number of credits, and "graduate" from that school. Dave McTeague drafted a letter which the Board approved for mailing to the applicant.

#### **7. Policy Issue: Potential rulemaking issues**

Dave provided a list of rules which require review. Dave has scheduled a Rules Advisory Committee meeting for October 18th. The rules to look at include:

- The Clinical Justification rule sunsets on January 20, 2008. Dr. Vissers moved to reissue the rule for rulemaking. The rule will be presented to the Board's Rule Advisory Committee for review. Kevin Shuba seconded the motion. No discussion. All in favor. Minga Guerrero, aye; Cookie Parker-Kent, aye; Mike Megehee, aye, Kevin Shuba, aye; Steve Koc, aye and Michael Vissers, aye.
- HB 2242 requires training for the new Emergency Use of Oxygen. The Board discussed the minimum training requirements, and where licensees might get that training (e.g. Western States Chiropractic College, the Red Cross, completion of an EMT course, or training by distributors). Vissers moved to enter permanent rulemaking to require all licensees to obtain the minimum education if they intend to administer oxygen for emergency use; Megehee seconded the motion. Minga Guerrero, aye; Cookie Parker-Kent, aye; Mike Megehee, aye, Kevin Shuba, aye; Steve Koc, aye and Michael Vissers, aye.
- Regarding the CE Course Evaluation form. Board members agreed to eliminate the form which requires amending the current CE rule (811-015-0025). (*The issue of continuing education will be further discussed at the Strategic Planning session.*) Megehee moved to go into permanent rulemaking to amend the rule regarding the CE Evaluation form; Koc seconded the motion No further discussion; all in favor. Vissers, aye; Parker-Kent, aye, Guerrero, aye; Megehee, aye; Shuba, aye; and Steve Koc, aye.
- Housekeeping rules:
  - The Application and Examination rule needs amending to account for a recent fee *decrease* for state and federal fingerprint background check; the fee is decreasing from \$52 to \$47.25.
  - Section 7b of the Application and Examination rule also needs to be cleaned up; the board itself does not review the exam results.
  - The rules addressing other minor issues, including an update to the Policy and Practice Guide date reference, an update to the date reference of the AG Administrative Law Manual, and amendments to the rule regarding the license status terminology change from "limited active" to

“Senior DC.” Mike Megehee moved to go into permanent rulemaking to consider these amendments. Minga Guerrero seconded the motion. No further discussion; all in favor. Shuba, aye; Koc, aye; Vissers, aye; Parker-Kent, aye; Megehee, aye; and Guerrero, aye.

## **8. Committee appointments**

Dr. Marcelitte Failla expressed interest in participating on a board committee and Dr. Guerrero suggested she be appointed to the Rules Advisory Committee. William Jackson, DC initially expressed interest but he withdrew that offer. The Board appointed Dr. Failla to the RAC.

## **9. Staff Report**

Items on Dave McTeague’s report were already discussed.

## **CORRESPONDENCE**

### **1. Robert Taylor DC, ODOC questions concerning ETSDP rule**

In a letter, on behalf of Oregon Doctors of Chiropractic, Dr. Taylor asked a number of questions for clarification of the Examinations, Tests, Substances, Devices and Procedures rule. Board reviewed Dave’s draft letter and attachments on the history of the rule. Board members supported the draft letter. *(The final letter is attached to these minutes as Attachment 1.)*

### **2. Robert Taylor DC, ODOC - radiological guidelines**

Dr. Taylor submitted a letter to the Board stating that ODOC has officially adopted the PCCRP radiological guidelines. In addition, he requests that the Board also adopt these same (radiographic) guidelines. Dr. Guerrero responded that the board does not endorse individual guidelines. Dr. Vissers suggested keeping the information for future consideration when the Diagnostic Imaging chapter of the Educational Manual (EMEBC) is updated. Dave will draft a letter to Dr. Taylor.

### **3. Susan Westfall, advertising questions**

Susan Westfall and her husband are in the process of establishing an advertising program for the VAX-D spinal decompression device. Joyce McClure reviewed this matter, and definitely finds violations of the Doctors Title Act. A DC is named but not identified as a chiropractic physician, there are statistics, on the second page, under Technology review. Westbrook says, “Spinal decompression therapy appears to be the optimal recommendation for most lumbar pain syndromes.” That asserts superiority. Farther down, she references the American Journal of Pain management. The problem Dr. McClure sees, is that Westbrook is not asserting rates of success, she is quoting only parts of other articles (the statistics), and assumes that the readership has the training to read these things with a questioning mind. After review, Dr. Guerrero suggested these questions might be better addressed by Jeffrey Tunick, DC’s. Board members agreed that this advertising be sent to Dr. Jeffrey Tunick and his spinal decompression group.

### **4. Judith Boothby DC, letters re: EPFX-SCIO device**

**8:40 a.m.** Dr. Boothby returned to talk about the ETSDP Committee process; she submitted a letter to the Board with recommendations for improvement of this process. *(She was dissatisfied with the Committee’s decision to deny EPFX SCIO device for investigational use.)*

Dr. Megehee asked if there was a report from the committee with their recommendations. Dr. Guerrero answered that she was the dissenting vote on the use of this device, however, she was in favor of using the device for standard/classical biofeedback. Dr. Guerrero told Dr. Boothby that she felt that the Committee was very thorough in their research. Dr. Aungst also felt that the Committee’s review was adequate and thorough. The website reference was unprofessional. When professionals and boards are

researching issues, and they see web pages which are inflammatory or charlatan, unrealistic or a bit deceptive, it will cause red alarms. Dr. Burns did contact the owner of the webpage and they made changes. However, the Committee and Board had already reviewed the site.

The biggest fear was that the device could be used in an unprofessional manner; however, anything could be used to generate fear in patients, and that was her reasoning for allowing use of the device as standard. Regardless, Dr. Guerrero again stated that the ETSDP process was fair.

Dr. Guerrero reminded Dr. Boothby of the Board's recommendation to obtain the IRB for investigational devices. The avenues to get the device into the profession is through an IRB (with an investigational consent form), or review the language of the ETSDP rule, and bring the issue back to another meeting.

Dr. James Aungst was also present and agreed that the ETSDP Committee did a thorough job of reviewing the device; the answer given was not satisfactory to the proponents of EPFX-SCIO device.

Dr. Guerrero suggested Dr. Boothby go back to the questions they felt were not clarified well enough (in the ETSDP process). Return to those questions, and formulate some solid answers to those questions; the Board may then re-review those answers.

Dr. Burns added that she did further research on radionics. The term "radionics" does not appear on the EPFX machine. There are radionic-like functions, but they are not classic radionic functions. Classic radionics involve touch-plates, pendulums, probes, kinesiography, and other forms of subtle muscle controls which are controlled by the therapist. Our device is designed to not have therapist control. Our device measures energetic interactions. The Committee assumed that her machine did use radionics.

Further she went on to mention the computer specs, and the output of the machine (6 volts DC [four D batteries]). This is an insignificant risk. She does not believe the FDA worries about the risk considering the low voltage. She tried to point out that the IRB will not further their cause either way.

Dr. Guerrero advised that Drs. Burns and Boothby write up a concrete proposal of use of the device and bring it back to the Board. Since the Board will have reviewed the rule by that time, perhaps they will make a recommendation to refer it back to the committee.

Dr. Sharron Fuchs made a final point that formal studies are structured; you have to have a non-invested party work within the structure to make it valid.

#### **IN THE MATTERS OF** (following executive session)

##### **Continuing Education**

The Board proposed to deny the use of Rapid Eye Technology (RET) procedure for CE. RET is not well-researched or scientifically substantiated. The trainers of this technique were offered the opportunity to provide additional studies, but no information was forthcoming. Kevin Shuba moved to deny RET for CE credit; Minga Guerrero seconded the motion. All in favor. Vissers, aye; Parker-Kent, aye, Guerrero, aye; Megehee, aye; Shuba, aye; and Steve Koc, aye.

**Case #2007-1004 Bryan Baisinger, DC**

The proposed a Letter of Reprimand for lack of informed consent and lack of documentation. Michael Vissers moved to accept the determination; Mike Megehee seconded the motion. All in favor. Vissers, aye; Parker-Kent, aye, Guerrero, aye; Megehee, aye; Shuba, aye; and Steve Koc, aye.

**Case #2007-1007**

The Board proposed insufficient evidence to find a violation. Steve Koc moved to accept the Board's determination; Kevin Shuba seconded the motion. All in favor. Vissers, aye; Parker-Kent, aye, Guerrero, aye; Megehee, aye; Shuba, aye; and Steve Koc, aye.

**Case #2007-1020**

The Board found no statutory violation in this matter. Minga Guerrero moved to accept the determination; Cookie Parker-Kent seconded the motion. All in favor. Vissers, aye; Parker-Kent, aye, Guerrero, aye; Megehee, aye; Shuba, aye; and Steve Koc, aye.

**Case #2007-1021**

The Board found no statutory violation in this matter. Mike Megehee moved to accept the determination; Cookie Parker-Kent seconded the motion. All in favor. Vissers, aye; Parker-Kent, aye, Guerrero, aye; Megehee, aye; Shuba, aye; and Steve Koc, aye.

**Case #2007-1024**

The Board proposed insufficient evidence to find a violation. Minga Guerrero moved to accept the Board's determination; Michael Vissers seconded the motion. All in favor. Vissers, aye; Parker-Kent, aye, Guerrero, aye; Megehee, aye; Shuba, aye; and Steve Koc, aye.

**Case #2007-1025**

The Board proposed to close the case and make the appropriate referral and all information to the Board of Naturopathic Examiners. Steve Koc moved to accept the Board's determination; Cookie Parker-Kent seconded the motion. Megehee recused. Vissers, aye; Parker-Kent, aye, Guerrero, aye; Shuba, aye; and Steve Koc, aye.

**Case #2007-1026**

The Board found no statutory violation in this matter. Michael Vissers moved to accept the determination; Kevin Shuba seconded the motion. All in favor. Vissers, aye; Parker-Kent, aye, Guerrero, aye; Megehee, aye; Shuba, aye; and Steve Koc, aye.

**Case #2007-2002 Richard Crokin, DC**

The Board proposed to issue a Letter of Reprimand and a \$2,500 civil penalty for violations of the Doctors Title Act, deceptive advertising (684.100).

On the Letter of Reprimand Mike Megehee moved to accept the Board's determination; Minga Guerrero seconded the motion. All in favor. Vissers, aye; Parker-Kent, aye, Guerrero, aye; Megehee, aye; Shuba, aye; and Steve Koc, aye.

On the \$2,500 Civil Penalty Kevin Shuba moved to accept the Board's determination; Mike Megehee seconded the motion. Parker-Kent, aye, Guerrero, aye; Megehee, aye; and Shuba, aye. Steve Koc, nay and Michael Vissers, nay.

**Case #2007-5013 Bryan Scott, DC**

Kevin Shuba moved to propose to issue a Notice of Intent to Suspend based on a request from the Department of Revenue for failure to pay taxes. Michael Vissers seconded the motion. All in favor. Vissers, aye; Parker-Kent, aye, Guerrero, aye; Megehee, aye; Shuba, aye; and Steve Koc, aye.

**Case #2007-3000**

The Board has determined Case closed with a Letter of Concern. Mike Megehee moved to accept the Board's determination; Michael Vissers seconded the motion. All in favor. Vissers, aye; Parker-Kent, aye, Guerrero, aye; Megehee, aye; Shuba, aye; and Steve Koc, aye.

**Case #2007-2000**

The Board found no statutory violation in this matter, however a letter will be sent to the licensee. Minga Guerrero moved to accept the determination; Steve Koc seconded the motion. All in favor. Vissers, aye; Parker-Kent, aye, Guerrero, aye; Megehee, aye; Shuba, aye; and Steve Koc, aye.

**Case #2006-3005**

The Board proposed Case Closed with letter of concern to be sent to the licensee. Steve Koc moved to accept the Board's determination; Mike Megehee seconded the motion. All in favor. Vissers, aye; Parker-Kent, aye, Guerrero, aye; Megehee, aye; Shuba, aye; and Steve Koc, aye.

**Case #s 06-1058 and 05-4001 Dorian Quinn, DC**

A Notice of Proposed Discipline was issued previously. The doctor has since come into full compliance with advertising laws and rules. The Board agreed to settle these cases with an Agreement of Voluntary Compliance. This is not a disciplinary action, but this is a public document. All in favor. Vissers, aye; Parker-Kent, aye, Megehee, aye; Shuba, aye; and Steve Koc, aye. Dr Guerrero, recused.

**3:00 PM      ADJOURN for the day**



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July 27, 2007

Robert Taylor DC  
2664 Campus Dr.  
Klamath Falls, Oregon 97601

Re: ETSDP rule

Dear Dr. Taylor,

The Board of Chiropractic Examiners reviewed your questions concerning the ETSDP rule at their July 19, 2007 meeting. They offer the following response.

1. What was the OBCE's intention for passing this rule?

The Experimental rule was adopted in 1987 which charged the OBCE with developing a list of experimental devices and procedures. This proved to be controversial. After several years of hearings and discussion, in 1995 a CAO committee proposed a rewrite of the rule which then became the current ETSDP rule. This current process has been used a limited number of times, either upon application from a licensee or a person, or in several cases upon a referral from the OBCE. There is a standard application and set of questions and an ETSDP committee has been appointed to advise the board on these applications.

2. Who were the board members at the time this rule was passed and why did they want it in place?

OBCE board members in December 1995 were Richard Gorman DC, Bonnie McDowell DC, Robert Hovenden DC, Roger Setera DC, and Larry Peterson Esq.

The previous rule was controversial, "out-dated and unworkable." The OBCE wanted to change the focus of the rule "to develop criteria by which (ETSDPs) are determined to be standard, non-standard, or investigational." The OBCE said the old rule provided no method to make these determinations.

3. Do Oregon DCs have to seek up front approval for their ETSDPs? No.

4a. Do Oregon DCs get to evaluate the risk of ETSDP's they are considering and not have to seek evaluation unless a complaint is made of if they want their ETSDP evaluated?

The answer is mostly yes. However, on several occasions the OBCE has requested the ETSDP committee review an ETSDP.

4b. Is there a way to insist that the ETSDP can be held in an honorable position while the evaluation is taking place?

Yes, Oregon DCs can use an ETSDP until or unless the OBCE determines that it is unacceptable.

5. Do Oregon doctors have to show a study to prove efficacy for investigational ETSDP's before the particular ETSDP can be considered investigational and included in our scope of practice?

No.

6. Does the OBCE have an intention of qualifying the levels of evidence for testimony that discredits certain ETSDP?

No. However information provided to the OBCE does need to be informative, credible and not misleading or deceptive. In most cases an ETSDP with weaker evidence may be appropriately rated as investigational. This presumes the ETSDP is arguably within the general confines of the Oregon chiropractic scope of practice.

An ETSDP whose operation and function that cannot be explained in a rational manner to reasonable people may produce a determination of "unacceptable" as was recently the case. This occurrence is extremely rare as there are just two devices in this category.

The Board hopes you find this responsive to your questions.

Sincerely,

Dave McTeague  
Executive Director