



Oregon

Theodore R. Kulongoski, Governor

Oregon Board of Chiropractic Examiners

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PUBLIC SESSION MEETING

Morrow Crane Building
First Floor Large Conference Room
3218 Pringle Road SE
Salem, Oregon

July 16, 2009

Members Present

Michael Vissers, DC President

Joyce McClure, DC Vice-President

Michael Megehee, DC Secretary

Ann Goldeen, DC

Steve Koc, DC

Cookie Parker-Kent, Public Member

Douglas Dick, Public Member

Staff Present

Dave McTeague, Executive Director

Kelly Beringer, Admin Assistant

Donna Dougan, Admin Assistant

Tom Rozinski, Investigator

Lori Lindley, Assistant AG

Others Present: John Cafferty, DC

CONVENE 8:30 AM

ADOPTION OF THE AGENDA

The agenda was adopted without changes.

PUBLIC COMMENTS

John Cafferty appeared at 9:15 AM. See the discussion below (after Discussion #3)

DISCUSSION ITEMS

1. Policy Issue: 2009 Legislation Review, Proposed Board Per Diem rule

Dave McTeague updated the board on the results of the 2009 Legislature. One of the issues still under discussion is consolidation of many small boards and state agencies, following the Governor's letter stating he was open to this possibility. The Governor's Health Policy Advisor meets regularly with the board executive directors and has requested advice on how this may be done. Dave had pointed out to the Advisor that we have a very intricate database system, and to integrate our whole system would be incredibly complex and cause a number of problems. He noted the OBCE's negative experience as previously part of the Oregon Health Division (OBCE gained its freedom in the early 1990's.) This is still a policy discussion "out there."

The OBCE current service level budget was adopted with a 13 % increase for inflation and other growth factors. House Bill 2118 has many important provisions including a standardized board mission statement and statute which parallels the OBCE's. This new law also gives the OBCE the discretion to prevent disclosure of licensees' emails. The OBCE's malpractice reporting bill passed without opposition. The bill that allows an increase board member per diems passed as well. HB 2059 passed requiring "duty to report" across professions and requires any licensee with an arrest, conviction, misdemeanor or felony to self-report to the board within 10 days. This will be highlighted in the next BackTalk newsletter.

The Legislature also adopted the Board's policy package for an increase in board member per diem. To put this in effect the OBCE has to adopt a new per diem rate by administrative rule. For the per diem increase the board needs to go into permanent rule making. Dr. Megehee proposed to adopt the change to the existing OAR 811-010-0080 – by adding subsection 3 – which will cite and increase the board per diem (from \$30) to \$139. (The per diem applies when members attend the new licensee training, NBCE, FCLB conferences, Rules committees, and the like). All board members (less Cookie Parker-Kent) noted an actual conflict of interest since they would benefit from this increase. All in favor. Joyce McClure, aye; Steve Koc, aye; Ann Goldeen, aye; Mike Megehee, aye; Doug Dick, aye; Cookie Parker-Kent, aye; and Michael Vissers, aye.

The proposed language will go before the Rules Advisory Committee and then before the OBCE again for further public comment..

2. Ethics & Jurisprudence Exam Development, Proposed Open Book Exam Rule

Drs. Vissers and Goldeen assisted the administrative staff with this workshop to re-develop the Ethics exam, along with former OBCE members Drs. Kathleen Galligan, Richard McCarthy, and Chuck Simpson., and Peer Review chair David Corll. About 36 doctors and one attorney participated for an entire morning. Dr. McClure shared her edited copy of the test questions (she saw some redundancies with the record keeping and records release topic); she also recommends more questions on the ETSDP (in consideration of the EPFX-SCIO device, etc.). She thought staff and the workshop did a great job.

As Dave talked about the great talent of workshop participants, he noted a number of potential committee members who should be invited to serve. He noted attracting diversity participants is still a challenge. Dr. Vissers asked about the diversity of our profession, and asked to see a current breakdown.

Our next step is beta-testing the questions. In addition, Donna (Dougan) is working on inputting this data into an online exam format (simultaneously making the test open-book). Dave explained that existing rule language 811-035-0015 section 18 seems to prohibit “discussion... before, during or after the exam” about the exam. Discussion: The Board wants more information and comments on this before making a final decision.

The board discussed how and/or who would take the test. Dr. Megehee recommended offering CE to licensees willing to beta-test. Dr. McClure suggested that the licensees with disciplinary action be required to take the beta-test; Dr. Megehee suggested though that we want to beta-test a standard group of DCs, not those that we think might be deficient. Dave recommends at least 20 participants. Staff also suggested that samples of the test be sent to licensees renewing monthly.

Dr. McClure moved to send the proposed language of 811-35-0015(18) to permanent rulemaking; Cookie Parker-Kent seconded the motion. All in favor. Megehee, aye, Goldeen, aye; McClure, aye; Koc, aye; Doug Dick, aye; Cookie Parker-Kent, aye; Michael Vissers, aye The Board requested the Rules Advisory Committee review the draft language allowing the open book examination.

3. Policy Issue: Informed Consent Rule

This issue comes out of the Ethics exam workshop group which was addressing boundaries, they rejected a question because they felt our rule on Informed Consent is ambiguous; it could be argued that it doesn't apply to “examinations.” Dave pointed out the rejected question. (Dave drafted language which adds, “during the course of treatment” to subsection (2) of OAR 811-035-0005. Dr. McClure had read Dr. Simpson's comments and recommends sending the draft proposal to the RAC with the request to address informed consent situations where an average person wouldn't understand the correlation

between the place being touched and the procedure being done. Joyce moved that we go into permanent rulemaking on this and refer it to the RAC. Mike Megehee seconded the motion. All in favor. Michael Vissers, aye; Mike Megehee, aye; Ann Goldeen, aye; Steve Koc, aye; Doug Dick, aye; Cookie Parker-Kent, aye; and Joyce McClure, aye.

9:30 AM Discussion # 6 - Administrative Rule Proposal by John Cafferty, DC

Dr. Cafferty requested the OBCE adopt rule language somewhat similar to that proposed in SB 521 last legislative session. After some explanation by Dr. Cafferty, Dr. Megehee recapped: Dr. Cafferty is proposing that the board draft a rule defining what is/is not “chiropractic;” Dr. Cafferty gave four reasons for his proposal – to be in compliance with federal statutes for Medicare; insurance companies would start denying chiropractic if this is not in both the state’s laws and rules; and thirdly, to insure that each patient has a qualified DC who can administer special manipulation, which is an adjustment, on each patient after he determines the exact location of the vertebral subluxation; and lastly, because of what has happened with Physical Therapists who are doing manipulation.

Dr. Cafferty distributed information to the board members: this is the three categories of manipulation that came from colleges that used these terms, muscle manipulation, “authrodial” (?) for fixated joints, specific manipulation”. He also included rules from other states.

Dr. Megehee volunteered to review Dr. Cafferty’s packet of information, will meet with him and report back to the board..

10 AM Dr. Cafferty left.

4. Committee Appointments

Dave provided the board a copy of all the existing board committees. We currently have about 20 members on the Rules Advisory Committee, and some have been on for a very long time, and he was wondering if it is time to recruit some new members? He also asked if the board would want to create a policy for the less structured committees, such as Rules, and ETSDP, etc. (unlike Peer Review, the policy is they serve two3 year terms). Dr. McClure said that with such a large group of people it is sometimes difficult to keep the discussion moving forward. It might be nice to set a smaller number of people in the RAC – maybe nine with four substitutes. Dr. Vissers agreed that setting a “term” is a good idea.

Dave noted that Drs. Hews and McMahon have been faithful members for 13 years. Dr. Goldeen added that some on the roster are retired. Is active practice required? (*answer is no*)

Dave recommended setting a policy. Dr. McClure suggested the policy specify a set number of members. Dr. Vissers asked to find out how many / who are active? Contact them by email.

No motion today until after the next RAC meeting. Participants should be active licensees (Staff will create a list of who is participating).

Regarding Peer Review, our two observation members have moved up to full-status members. Dr. McClure has a recommendation for this committee. It was suggested she have them send a letter of interest. Dave reminded board members to consider diversity.

5. Policy Issue: CA Initial Training Requirements (carried forward from March meeting)

(Dr. McClure) The question is who is appropriate for delivering the training for chiropractic assistants. Dr. McClure's initial take is that the trainers must have the ability to perform the techniques and procedures that they are training CAs to perform. Also we wanted to clarify that part of that training should be done where the CA would actually be performing their duties. This eliminates LMT's from training the CAs because they do not have within their scope the ability to perform ultrasound, muscle-stim or cold laser etc. So we recommend moving the practical aspect of the training to the supervising DC.

The question remains, should the LMT be allowed to train the CA in the didactic portion of the information (the bookwork). IF the LMT is also a certified chiropractic assistant (licensed and active at least five years), she is not opposed to their training other CAs. Christina Balsiger and Lisa Brooking are certified chiropractic assistants, however, it is not clear if Ms. Brooking has the five years active CA practice. Dr. McClure moves that we send the issue to the Rules Advisory Committee.

Dr. Megehee added that in training programs under the federal government, anyone can provide the classroom training, but those that provide the practical part must be "actively engaged" at least one year doing that activity, not just licensed. Dr. Megehee is referring to the trainers at the massage schools – if they are not actively engaged CCAs, they would not qualify as trainers.

Dr. McClure also added that this whole concept came about from an FCLB meeting discussion (a couple years ago). Some states said insurance companies were refusing payment for physiotherapy unless it were actually provided by the doctor because, they said, the chiropractic assistants did not have enough training to be performing those procedures. They were going to require that a CA have 24 hours initial training. So Dr. McClure thought Oregon may want to increase the training, and/or see if what we have is sufficient.

A lot of CA's now are getting their training from people who do not do what they are teaching. The trained CA does not actually know what the problems are with using ultrasound. Then the question was "is the training really practical?" Are the means determining the ends that we want. Then Dr. Vissers suggested that the employing/supervising DC perform the practical hands-on portion. Dr. Megehee asked if we should have a requirement for proficiency training in each one of these "things" (hydrotherapy, electrotherapy and physiotherapy?) and the doctor can do the specific training for his machines.

Questions to RAC:

1. Are there enough hours in the right areas of focus to address the public safety aspect of licensing Chiropractic Assistants
2. Who is qualified to teach what portions of that material?
3. Are the current education requirements adequate? If not, what is (for protection of the public)?

Dr. McClure moved to send the ITC requirements and instructor requirements to the Rules Advisory Committee for their recommendation; Dr. Megehee seconded the motion. All in favor. Steve Koc, aye; Mike Megehee, aye; Cookie Parker-Kent, aye; Ann Goldeen, aye; Joyce McClure, aye; Doug Dick, aye; Michael Vissers, aye.

Discussion: We may want to suggest that it might be appropriate to increase the number of hours to facilitate that. Maybe we need to have more hours in the book learning about the indications and contra-

indications, and then require on-the-job training. An office would have to sign an affidavit that the CA applicant was trained in the uses and safety precautions of the equipment there.

7. Staff Report

The ETSDP committee is meeting on Thursday, July 30 at WSCC to address the Breast Thermography issue. Dr. Dean Clark will be present to present his information as well.

Regarding the New Licensee Introduction scheduled for October 1 in Salem, 9 AM to noon. Dr. Vissers will not be there; Dr. Koc will, but we need two board members on the panel. If no other board member is available, Dr. Megehee will try to fly in to participate.

CORRESPONDENCE

1. Albert Noble DC, re: Lamp Probe 4000, plus, pre pay plan questions

Is it taught in the schools or is it in common use in the profession. The board needs more information to make a determination. It claims “high frequency technology”; is it infrared? Ask him to provide more.

Dr. Noble asks a second question about pre-pay plans. Dr. McClure commented that orthodontists or dentists have similar plans, but the difference is they have an actual written plan with specific measurable goals and points of care. If these plans had measurable goals versus just wellness care, they might be more appropriate. That way if the patient has a problem, there is something to discuss, yes or no I did/did not meet these goals of care, etc. Dr. Vissers stated that even “no compete contracts” are not enforceable unless specific things happen prior to the contract being written. Lori added that regarding the pre-pay plans, the patients could take the DC to small claims court. Dr. McClure suggests allowing pre-pay plans only if specific, measurable and attainable goals are established.

Lori suggested looking at other states’ rules on that.

Dr. Megehee asked if we can legally mandate for or against these “contracts.” Again, Lori would like to look at other states’ laws and rules on pre-pays.

Dr. Megehee commented that the DCs may be advised to have a way to get out of the contract as they may not even be able to fulfill their obligation because of clinical justification. Dr. Megehee is fine with letting this pass, and put an article into BackTalk. Otherwise, direct Lori to get more information. Send Dr. Noble a letter.

10:15 AM ADJOURN to Executive Session

12:50 PM RE-CONVENE

IN THE MATTER OF

Terra Schueneman CA Applicant

The Board determined to license the CA applicant with the stipulations that she disclose her background to her current and all future supervising doctors of chiropractic. Joyce McClure moved to accept the Board’s determination; Cookie Parker-Kent seconded the motion. All in favor. Mike Megehee, aye; Ann Goldeen, aye; Joyce McClure, aye; Steve Koc, aye; Doug Dick, aye; Cookie Parker-Kent, aye; and Michael Vissers, aye.

David Bohrer, DC (New case #2009-5010)

The Board proposed to issue a Notice to Revoke for practicing chiropractic while his license is suspended. The board authorized the Executive Director to issue a press release about the matter. Cookie Parker-Kent moved to accept the Board's determination; Doug Dick seconded the motion. All in favor. Michael Vissers, aye; Mike Megehee, aye; Ann Goldeen, aye; Joyce McClure, aye; Steve Koc, aye; Doug Dick, aye; and Cookie Parker-Kent, aye.

Mark Walsh, DC (New case #2009-5008)

The Board directed staff to have the Department of Revenue return Mark Walsh's collection account. In addition, the Board proposed to issue a Notice to Suspend Walsh for failure to pay the civil penalty as agreed in the Final Stipulated Order of Case # 2004-3003. Cookie Parker-Kent moved to accept the Board's determination; Joyce McClure seconded the motion. All in favor. Steve Koc, aye; Doug Dick, aye; Cookie Parker-Kent, aye; Michael Vissers, aye; Mike Megehee, aye; Ann Goldeen, aye; and Joyce McClure, aye.

Robert Sainz (Washington licensee)

The Board proposed to file a complaint with the State of Washington Quality Assurance Commission against Dr. Sainz for failure to cooperate and pay the \$1000 civil penalty assessed for unlicensed practice. Cookie Parker-Kent moved to accept the board's determination; Joyce McClure seconded the motion. The Board also directed staff to file a lien against any real property owned by Robert Sainz. All in favor. Steve Koc, aye; Doug Dick, aye; Cookie Parker-Kent, aye; Michael Vissers, aye; Mike Megehee, aye; Ann Goldeen, aye; and Joyce McClure, aye.

Case #2006-1032 Christian Schuster, DC

The Board proposed to issue the Final Order with a 90-day suspension effective August 1, 2009, 3-year probation, participate in a two-year mentoring plan of supervision, pay a \$20,000 civil penalty and pay the cost of the investigation and hearing in the amount of \$44,321.33, and complete 20 hours of continuing education on record keeping within six months of the date of this Final Order. Steve Koc moved to accept the Board's determination; Doug Dick seconded the motion. All in favor. Cookie Parker-Kent, aye; Michael Vissers, aye; Mike Megehee, aye; Ann Goldeen, aye; Joyce McClure, aye; Steve Koc, aye; and Doug Dick, aye.

Case #2009-1009 Brent Warner, DC

The Board proposed to issue a Notice to Suspend for 120 days followed by a three year probation, a \$5,000 civil penalty and a requirement to take the PROBE ethics class for failure to provide information to the board, for treating patients without keeping chart notes and for sexual misconduct with a patient. Cookie Parker-Kent moved to accept the board's determination; Joyce McClure seconded the motion. All in favor. Steve Koc, aye; Doug Dick, aye; Cookie Parker-Kent, aye; Michael Vissers, aye; Mike Megehee, aye; Ann Goldeen, aye; and Joyce McClure, aye.

Case #2009-1019

The Board determined insufficient evidence to find a violation. A detailed letter of concern will be sent to the licensee. Joyce McClure moved to accept the Board's determination; Ann Goldeen seconded the motion. All in favor. Steve Koc, aye; Doug Dick, aye; Cookie Parker-Kent, aye; Michael Vissers, aye; Mike Megehee, aye; Ann Goldeen, aye; and Joyce McClure, aye.

Case #2009 - 1020

The Board determined insufficient evidence to find a violation. A letter of concern will also be sent to this licensee. Michael Vissers moved to accept the Board's determination; Cookie Parker-Kent

seconded the motion. All in favor. Steve Koc, aye; Doug Dick, aye; Cookie Parker-Kent, aye; Michael Vissers, aye; Mike Megehee, aye; Ann Goldeen, aye; and Joyce McClure, aye.

Case #2009-3017 Chris McCutcheon

The Board proposed to refer this matter to the Klamath County Sheriff's Dept for unlicensed practice of chiropractic. In addition the Board authorizes the release of confidential information to the Sheriff's Department and District Attorney's office. If needed, the Board also authorized the staff to file for a restraining order, and injunction in circuit court .Doug Dick moved to accept the Board's determination; Michael Megehee seconded the motion. All in favor. Ann Goldeen, aye; Steve Koc, aye; Doug Dick, aye; Cookie Parker-Kent, aye; Michael Vissers, aye; Mike Megehee, aye; and Joyce McClure, aye.

Case 2009-1006 Daniel Miller, DC

After having referred this matter to the Peer Review Committee, and receiving their report and recommendations, the Board adopted PRC's recommendations. The Board proposed to issue a Letter of Reprimand with a \$3000 civil penalty, a two-year probation, 12 (additional) hrs CE pre-approved by the board, for violations of records rule and clinical justification. Michael Megehee moved to accept the Board's determination; Cookie Parker-Kent seconded the motion. All in favor. Ann Goldeen, aye; Joyce McClure, aye, Steve Koc, aye; Doug Dick, aye, Cookie Parker-Kent, aye, Michael Vissers, aye; and Mike Megehee.

Case #2009-2002 Shane McLaughlin, DC

The Board proposed to issue a Notice of Disciplinary Action including a 90-day suspension; a \$5000 civil penalty; 12 (additional) hours board approved record keeping CE; start a two-year probation with file reviews during the probation; for fabricating patient records and for billing for services not rendered. Steve Koc moved to accept the Board's determination; Cookie Parker-Kent seconded the motion. All in favor. Doug Dick, aye; Cookie Parker-Kent, aye; Michael Vissers, aye, Mike Megehee, aye; Ann Goldeen, aye; Joyce McClure, aye; and Steve Koc, aye.

1 PM ADJOURNED to Executive Session

End of the Public Session