



Oregon

Theodore R. Kulongoski, Governor

Oregon Board of Chiropractic Examiners

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PUBLIC SESSION

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

July 24, 2008

Members Present

Minga Guerrero, DC President
Michael Vissers, DC Vice-President
Joyce McClure, DC Secretary
Michael Megehee, DC
Steve Koc, DC
Douglas Dick, Public Member
Cookie Parker-Kent, Public Member

Staff Present

Dave McTeague, Executive Director
Kelly Edmundson, Administrative Assistant
Michael Summers, Investigator
Lori Lindley, Assistant AG

Others Present: Sharron Fuchs, DC

CONVENE 8:45 AM

ADOPTION OF THE AGENDA Board adopted the agenda with the omission of discussion #6 (it is a duplicate of Correspondence #4 - Scott Haines letter)

DISCUSSION ITEMS

1. Strategic Plan Review (carried forward from May 2008 meeting)

Dave reviewed some areas of progress. We have also been going through some staff challenges – Jane Billings took another position with another state agency; and other staff have been out on leave; these issues have left us short-staffed the past couple months. Overall, our budget is very tight with increased personal services (staff) costs; the attorney general costs have increased. In addition, we had the Strategic Planning retreat, and we published a couple BackTalk newsletters. To help manage our resources, Dave may delay hiring for the OS1 position. We are certain we will have a contested case hearing coming up. Dave projects that we may need to ask for a fee increase in about two years.

The re-write of the Ethics exam was one of the Strategic Plan projects we wanted to work on. It is going to take a while to get this on track (it is very time consuming; we don't have a clear roadmap, and we don't have funds to hire a consultant). Complaint case management is one of Dave's major projects, and it competes with the other projects before us.

Another project the board commissioned at its last meeting is the development of a matrix for consistent discipline. Did the Board want Dave to write a first draft? Do we need a committee of the Board to look at it? Can we use an existing document to add to?

Dave is open to any suggested re-prioritizing of these projects. After some discussion the Board agreed that the Ethics Exam takes priority over the development of the matrix. Dave will provide

questions from the current exam to each board member to practice drafting questions in the new format.

On another matter, Dr. Guerrero is in the process of writing a “curriculum,” an OBCE-sponsored training, for established practitioners (similar to the training provided to new licensees). We could offer 3 hour CE. She suggested offering a combined seminar with the state associations to solidify the differences between the board and the associations. She may be ready to present the curriculum at the September meeting.

In closing, Dr. McClure recommends contacting Marcella Box, DC as a potential new committee member, and Dave added that the September 2008 is scheduled to be held in Salem at the OBCE’s office.

2. Public Hearing on Proposed Administrative Rule: 9:30 a.m.

Rules Advisory Committee Report - Add unprofessional conduct language to CCA rule.

Dr. Guerrero opened the floor for the Administrative Rule Hearing, and requested that Dr McClure report on the Rules Committee’s (RAC) recommendations. The RAC met a second time on July 8 to discuss the proposed changes, with mixed opinions. The committee agreed that even though the power differential between a CCA and the patient is not the same as the DC/patient relationship, some ethical boundaries should be established. The RAC feels it is appropriate to have this language.

Dr. Sharron Fuchs commented. She thought that we were going to conclude that it is inappropriate for CCAs to date patients, but that’s not where we ended up. There were some email exchanges that muddied the waters more. After all the exchange she thought it would have been easier to return to the original “cut and paste” draft language.

Dr. McClure added that there was some discussion on a “Chinese wall.” This has been used in situations where, for example, an employee may have inside knowledge about a former employer that they are ethically bound to keep confidential from their current employer. The current employer is informed of the prior relationship, and clear boundaries are established within the current situation to preclude overstepping of these constraints. In the practice situation, this would mean that if a CCA had a dating relationship with a current patient, then the supervising doctor and CCA would establish a working arrangement that would protect the patient (i.e. the CCA would not be involved with that patient’s treatment in the office.)

Dr. Guerrero closed the hearing to poll the board members on the acceptance or rejection of sections 16. Regarding the removal of the words, “on the clinic premises” from subsection 16a, five members are in favor of removing the language. Seven agree to keep subsection 16b, which references use of protected or privileged information, and five agree to remove proposed subsection 16c regarding disclosure to an existing relationship to the supervising DC. Doug Dick pointed out that subsection 16a voids 16c anyway.

After discussion, the board will also keep the language determining whether a patient is a current patient.

In conclusion, the Board proposed to adopt OAR 811-010-0110 with the following changes:

- 1) Attach to the current CCA rule, the unprofessional conduct language of OAR 811-035-0015 with minor edits, i.e. ...
- 2) Add a new subsection (16b), "Use of protected or privileged information obtained from the patients to the detriment of the patient;"
- 3) Exclude "Charging fees for unnecessary services"
- 4) From the original CCA rule language , DELETE Subsection 14b, "Fraud or misrepresentation in applying for or procuring certification, or certification renewal;" and
- 5) Change all references of "certificate" or "certification" to "license" or "licensure."

Dr. McClure moved to accept the proposed changes; Dr. Vissers seconded the motion. Accepted. Megehee, aye; McClure, aye; Guerrero, aye; Koc, aye; Dick, aye; Parker-Kent, aye; and Vissers, aye. The adopted language will be attached to these minutes as an addendum.

3. OBCE Budget & Legislative Issues

In addition to the budget information that was discussed earlier today (discussion #1), we are going forward with our budget package, which includes our request to increase board member per diems. Regarding traffic crash reports, the Governor's Office did not approve our request to sponsor this as an agency bill. We shared that information with the professional associations, and with Senator Monnes-Anderson, and she has requested a draft; there will be a bill we can support.

In addition, there is proposal by the House Health Committee proposal to make public membership on all health boards, "50% minus one." They propose that we give up one of our professional members and add another public. Dave expects a lot of opposition to that concept. The Governor's Office has a very reasonable package of proposals. One proposal gets the Governor's Office more involved in the hiring of Executive Directors, and they want more standardized reporting on licensing and regulation. There is a lot of discussion on diversion and monitoring programs. We have one DC in Portland who has the idea that we need a random check on chiropractors for substance abuse. Dave sees no need for this, and it is likely not going to be accepted. The real conversation is what to do with these impaired licensees and diversion programs. There is a liability concern for those boards and how they process the issues. Dr. McClure likes another agency's plan to follow up for three years after a diversion program is completed. Dave agreed that we can incorporate that type of follow up in our board orders.

Also, the Oregon State Bar (OSB) is proposing that we eliminate cost recovery provisions in our proposed and final orders. The OSB is also requiring Notice and contested case proceedings for competency examination. With health boards, Dave feels the competency exam is a patient protection issue and this requirement is unreasonable.

4. Policy Discussion: When to invite licensees/complainants to Exec Session to interview w/Board *(No backup for this discussion).* Dr. Guerrero brought this issue before the board. She wants to be fair to both the public and the doctors. She questions, IF a DC asks, or is asked, to come before the board to explain himself, should we also then contact the complainant to ask if they want to present

their side/opinion? Dr. McClure has question whether this be an option for the Peer Review interviews as well. Dr. Koc said this should be determined on a case by case basis. Dr. Guerrero will pose her request on paper for the September meeting.

5. Policy Discussion: Digitized plain film X-rays

(No backup for this discussion) Dave and Dr. Guerrero met with insurance company representatives and they had a lot of questions about digitized films. One company solicits the business of many DCs, but some clinics use this particular type of filming almost 100% on their patients. Dr. Megehee stated that there is so much flexibility in using these films; you can look at the films two or three different ways, and you can change the contrast, the kVp settings; etc. Dr. Guerrero will contact Drs. Tyrone Wei and Tim Sellers (DACBRs) for their input. Table this discussion until September.

6. Staff Report *(Nothing more to add)*

CORRESPONDENCE

1. Dennis Nowack DC, re: American Chiropractic Network (carried forward from May meeting)

This is a public protection issue, but Dr. Megehee added that we (the OBCE) does not regulate the insurance companies. Dr. Guerrero proposed drafting a letter, emailing to board members for their review, and then sending it to the Insurance Commissioner. Hold over.

2. Gregg Helms DC, re: Minor Surgery CE

Dr. Helms is complaining because there are no classes to meet the minor surgery and proctology CE requirement (OAR 811-015-0030). Dr. Guerrero shared Dr. Lamm's point – he feels that practical experience is better than a class; and that we don't need to require a mandatory class. Dr. McClure thinks CE is important as it is an issue of competency; however, the certified DC should be able to provide (documented) proof of practical experience (from another venue, not their own clinic). There is online CE available through JAMA (Journal of the American Medical Association). Board members agree. Dr. Guerrero will ask Dr. Lamm or Dr. Helms what type of practical experience could, or would, they acquire/document? Table this discussion.

3. Eric Hansen, Safeco, re: Advance billing

This is a letter of inquiry, not a complaint. SAFECO and BCBSO have a policy that they will not say whether something (i.e. a TENS unit) is approved until they receive the billing, but the patient wants to know if it is covered before they get it. Both insurance companies told her (Dr. Guerrero) to bill, and just don't give the patient the unit until after SAFECO's approval. After discussion, the board is agreed; when a durable product is delivered to the patient, the insurance company is billed. The contractual relationship is between the patient and the insurance company. In the letter to SAFECO, state, "Billing for services not rendered is a violation."

In addition, Dr. Hansen asked about the dispensing of "expired" supplements. And, add to the letter, dispensing supplements that are "best if used before ..." is different than "expired. If you choose to make a formal complaint we will consider all facts in the case. The Board would be concerned about an expired product being sold versus a 'best if used by' product."

4. Scott Haines DC - Can a DC hire an denturist *(The denturist is separately licensed and able to work alone under their own license)* in order to make orthotic appliances for patients mouth/jaw?

This DC does craniosacral treatments primarily and he is working with a dentist and they produce splints for TMJ to stabilize it. He wants to know if he can hire and supervise this dentist. The Denturists board is okay with that. Board members agree. Add this policy to the Board's Policy & Practice Guide and the next BackTalk

ADJOURN to Executive Session 10:55 AM
RETURN to Public Session 1:30 PM

IN THE MATTERS OF (following executive session)

CA Applicant, Lance Hatch (revoked DC) The Board proposed to deny the CA application submitted by Lance Hatch. The Board will accept his letter of withdrawal. Minga Guerrero moved to accept the Board's determination; Cookie Parker-Kent seconded the motion. All in favor. Cookie Parker-Kent, aye; Steve Koc, aye; Michael Vissers, aye; Douglas Dick, aye; Joyce McClure, aye; Mike Megehee, aye; and Minga Guerrero, aye.

Case #07-1036 The Board determined insufficient evidence to find a violation. Minga Guerrero moved to accept the Board's determination; Joyce McClure seconded the motion. All in favor. Parker-Kent, aye; Koc, aye; Vissers, aye; Dick, aye; McClure, aye; Megehee, aye; and Guerrero, aye.

Case #08-1002 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. Parker-Kent, aye; Koc, aye; Vissers, aye; Dick, aye; McClure, aye; Megehee, aye; and Guerrero, aye.

Case #08-1007 The Board has determined case closed with a letter of concern. Minga Guerrero moved to accept the Board's determination; Cookie Parker-Kent seconded the motion. All in favor. Parker-Kent, aye; Koc, aye; Vissers, aye; Dick, aye; McClure, aye; Megehee, aye; and Guerrero, aye.

Case #08-1009 The Board found insufficient evidence to determine a violation. Joyce McClure moved to accept the Board's determination; Michael Vissers seconded the motion. Parker-Kent, aye; Koc, aye; Vissers, aye; Dick, aye; McClure, aye; Megehee, aye. Minga Guerrero recused.

Case #08-1012 The Board determined no statutory violation. Michael Vissers moved to accept the Board's determination; Joyce McClure seconded the motion. All in favor. Parker-Kent, aye; Koc, aye; Vissers, aye; Dick, aye; McClure, aye; Megehee, aye; and Guerrero, aye.

Case #08-1013 The Board determined no statutory violation. Michael Vissers moved to accept the Board's determination; Douglas Dick seconded the motion. All in favor. Parker-Kent, aye; Koc, aye; Vissers, aye; Dick, aye; McClure, aye; Megehee, aye; and Guerrero, aye.

Case #08-1010 The Board determined no statutory violation. Steve Koc moved to accept the Board's determination; Michael Vissers seconded the motion. All in favor. Parker-Kent, aye; Koc, aye; Vissers, aye; Dick, aye; McClure, aye; Megehee, aye; and Guerrero, aye.

Case #07-3008 The Board determined case closed. Mike Megehee moved to accept the Board's determination; Cookie Parker-Kent seconded the motion. All in favor. Parker-Kent, aye; Koc, aye; Vissers, aye; Dick, aye; McClure, aye; Megehee, aye; and Guerrero, aye.

Case #08-3002 The Board determined no statutory violation. Cookie Parker-Kent moved to accept the Board's determination; Joyce McClure seconded the motion. All in favor. Parker-Kent, aye; Koc, aye; Vissers, aye; Dick, aye; McClure, aye; Megehee, aye; and Guerrero, aye.

Case #08-5011 Christine Adler, CA applicant

The Board proposed to accept the Draft Order on withdrawal of this CA application. Minga Guerrero moved to accept the Board's determination; Michael Vissers seconded the motion. All in favor. Parker-Kent, aye; Koc, aye; Vissers, aye; Dick, aye; McClure, aye; Megehee, aye; and Guerrero, aye.

Case #08-5016 Dirk Friedt, CA applicant

The Board proposed to deny the Chiropractic Assistant's application. Steve Koc moved to accept the Board's determination; Cookie Parker-Kent seconded the motion. All in favor. Parker-Kent, aye; Koc, aye; Vissers, aye; Dick, aye; McClure, aye; Megehee, aye; and Guerrero, aye.

Case #08-3001 The Board proposed to issue a case closed contingent upon the doctor's completion of 12 hours coding and record keeping/documentation within 45 days. Steve Koc moved to accept the Board's determination; Cookie Parker-Kent seconded the motion. All in favor. Parker-Kent, aye; Koc, aye; Vissers, aye; Dick, aye; McClure, aye; Megehee, aye; and Guerrero, aye.

Case #08-3003 The Board proposed case closed contingent upon the doctor's submission of an acceptable and current certificate in chiropractic rehabilitation and a letter of good-standing from the issuing organization. If the licensee does not provide the documentation, the licensee must Cease and Desist claiming this specialty. Steve Koc moved to accept the Board's determination; Cookie Parker-Kent seconded the motion. All in favor. Parker-Kent, aye; Koc, aye; Vissers, aye; Dick, aye; McClure, aye; Megehee, aye; and Guerrero, aye.

Case #08-1000 The Board determined no statutory violation with a letter to the doctor recognizing his efforts at improving his documentation. Mike Megehee moved to accept the Board's determination; Michael Vissers seconded the motion. All in favor. Parker-Kent, aye; Koc, aye; Vissers, aye; Dick, aye; McClure, aye; Megehee, aye; and Guerrero, aye.

Case #08-1003 Thomas F Miller, DC

The Board proposed to issue a Notice of Discipline for a \$2500 civil penalty, a Letter of Reprimand, and 12 hours CE in X-ray technique; the CE must be taken in person (i.e. not completed by video or other electronic means). Joyce McClure moved to accept the Board's determination; Douglas Dick seconded the motion. All in favor. Parker-Kent, aye; Koc, aye; Vissers, aye; Dick, aye; McClure, aye; Megehee, aye; and Guerrero, aye.

ADJOURN 2:00 PM

Adopted Rule, July 24,2008
Not Yet file with Secretary of State

New language in bold, deleted language ~~crossed-out~~

Certified Chiropractic Assistants

811-010-0110 (1) Ancillary personnel authorized by ORS 684.155(c) shall be known as Certified Chiropractic Assistants.

(2) Certified Chiropractic Assistants may be ~~certified~~ **licensed** upon compliance with the following standards and procedures:

(a) The Certified Chiropractic Assistant shall successfully complete a Board approved training course offered by an association, college or otherwise approved vendor. The initial training course shall be at least six hours in length, four hours of which must be in physiotherapy, electrotherapy and hydrotherapy and must have been completed within the 12 months preceding the application date;

(b) The applicant shall complete an application form and an open book examination supplied by the Board;

(c) If an applicant has a certificate or license from another state and adequate documentation of training, the Board may waive the requirement for the initial training course; and

(d) A person initially ~~certified~~ **licensed** between March 1st and May 31st is exempt from the continuing education requirement for renewal.

(3) The training course verification form, completed application form, completed examination, and fees in the following amounts shall be submitted to the Board:

(a) Application fee - \$25;

(b) Examination fee - \$35; and

(c) Certification fee - \$50.

(4) The applicant shall be at least 18 years of age.

(5)The Certified Chiropractic Assistant shall not perform electrotherapy, hydrotherapy, or physiotherapy until he or she receives a ~~certificate~~ **license** from the Board.

(6) A Certified Chiropractic Assistant shall be directly supervised by the Chiropractor at all times. The supervising Chiropractor must be on the premises

(7) The scope of practice does not include performing physical examinations, taking initial histories, taking X-rays, interpretation of postural screening, doing manual muscle testing or performing osseous adjustments or manipulations.

(8) Certified Chiropractic Assistants shall report to the Board, in writing, his/her mailing address and place of employment. Notification of a change of mailing address or place of employment must be made within 10 days of the change.

(9) On or before each June 1, the Board of Examiners shall send the renewal notice to the Certified Chiropractic Assistant at the last known mailing address.

(10) On or before each August 1 the Certified Chiropractic Assistant shall mail to the Board of Examiners the renewal form with the following:

(a) Renewal fee of \$50; and

(b) Evidence of successful completion of six hours of Board approved continuing education during the 12 months preceding. No continuing education hours may be carried over into the next renewal year.

(11) Continuing education programs may be comprised of subjects that are pertinent to clinical practices of chiropractic. Continuing education must meet the criteria outlined in OAR 811-015-0025 sections (8), (9) and (10), excluding the requirement for the evaluation form in subsection (10)(a).

(12) The failure, neglect or refusal of any person holding a certificate to show compliance with subsection (10)(a) and (b) of this rule shall cause the certificate to automatically expire August 1 and the Certified Chiropractic Assistant must reapply.

(13) The Certified Chiropractic Assistant's ~~certificate~~ license shall be displayed at all times in the Chiropractic Physician's office during the Certified Chiropractic Assistant's employment.

(14) The Board may refuse to grant a ~~certificate~~ license to any applicant, may suspend or revoke a ~~certificate~~ license, or may impose upon an applicant for ~~certification~~ **licensure** or Certified Chiropractic Assistant a civil penalty not to exceed \$1,000 upon finding of any of the following:

Adopted Rule, July 24,2008
Not Yet file with Secretary of State

(a) Cause, which is defined as, but not limited to, failure to follow directions, unprofessional or dishonorable conduct, injuring a patient, or unlawful disclosure of patient information. The supervising Chiropractic Physician is required to notify the Board, in writing, of any dismissal of a Certified Chiropractic Assistant for cause within ten days. The Board shall determine if there is cause for action and shall be governed by the rules of the Board adopted pursuant to ORS Chapter 183;

~~————(b) Fraud or misrepresentation in applying for or procuring certification, or certification renewal; (same language below)~~

~~————(e) (b) Conviction of a misdemeanor involving moral turpitude or a felony; or~~

~~————(d) (c) Failure to notify the Board of a change of location of employment as required by these rules.~~

(15) The service of the Certified Chiropractic Assistant is the direct responsibility of the licensed Chiropractic Physician. Violations may be grounds for disciplinary action against the Chiropractic Physician under ORS 684.100(9).

(16) Unprofessional or dishonorable conduct is defined as: any unethical, deceptive, or deleterious conduct or practice harmful to the public; any departure from, or failure to conform to, the minimal standards of acceptable Certified Chiropractic Assistant practice; or a willful or careless disregard for the health, welfare or safety of patients, in any of which cases proof of actual injury need not be established. Unprofessional conduct shall include, but not be limited to, the following acts of a Certified Chiropractic Assistant:

(a) Engaging in any conduct or verbal behavior with or towards a patient that may reasonably be interpreted as sexual, seductive, sexually demeaning or romantic (also see ORS 684.100).

(b) Use of protected or privileged information obtained from the patient to the detriment of the patient.

(c) A license holder shall not engage in sexual relations or have a romantic relationship with a current patient unless a consensual sexual relationship or a romantic relationship existed between them before the commencement of the Certified Chiropractic Assistant-patient relationship.

(d) "Sexual relations" means:

(A) Sexual intercourse; or

(B) Any touching of sexual or other intimate parts of a person or causing such person to touch the sexual or other intimate parts of the licensee for the purpose of arousing or gratifying the sexual desire of either Certified Chiropractic Assistant or patient.

(e) In determining whether a patient is a current patient, the Board may consider the length of time of the Certified Chiropractic Assistant-patient contact, evidence of termination of the Certified Chiropractic Assistant-patient relationship, the nature of the Certified Chiropractic Assistant-patient relationship, and any other relevant information.

(f) A patient's consent to, initiation of or participation in sexual behavior or involvement with a Certified Chiropractic Assistant does not change the nature of the conduct nor lift the prohibition.

~~————(17) Charging fees for unnecessary services;~~

(17) Practicing outside the scope of the practice of a Certified Chiropractic Assistant in Oregon;

(18) Charging a patient for services not rendered;

(19) Intentionally causing physical or emotional injury to a patient;

(20) Directly or indirectly engaging in threatening, dishonest, or misleading fee collection techniques;

(21) Soliciting or borrowing money from patients;

(22) Possessing, obtaining, attempting to obtain, furnishing, or prescribing controlled drugs to any person, including self, except as directed by a person authorized by law to prescribe drugs; illegally using or dispensing controlled drugs;

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(23) Aiding, abetting, or assisting an individual to violate any law, rule or regulation intended to guide the conduct of Certified Chiropractic Assistants or other health care providers; or

(24) Violating the rights of privacy or confidentiality of the patient unless required by law to disclose such information;

(25) Perpetrating fraud upon patients or third party payors, relating to the practice of chiropractic;

(26) Using any controlled or illegal substance or intoxicating liquor to the extent that such use impacts the ability to safely conduct the practice of a Certified Chiropractic Assistant;

(27) Practicing as a Certified Chiropractic Assistant without a current Oregon license;

(28) Allowing another person to use one's Certified Chiropractic Assistant Certification for any purpose;

(29) Resorting to fraud, misrepresentation, or deceit in applying for or taking the license exam or obtaining a license or renewal thereof;

(30) Impersonating any applicant or acting as a proxy for the applicant in any Certified Chiropractic Assistant license examination;

(31) Disclosing the contents of the licensure examination or soliciting, accepting, or compiling information regarding the contents of the examination before, during, or after its administration;

(32) Failing to provide the Board with any documents requested by the Board;

(33) Failing to fully cooperate with the Board during the course of an investigation, including but not limited to, waiver of confidentiality privileges, except attorney-client privilege;

(34) Claiming any academic degree not actually conferred or awarded;

(35) Disobeying a final order of the Board; and

(36) Splitting fees or giving or receiving a commission in the referral of patients for services.

(37) Receiving a suspension or revocation by another state of a certificate or license for a Certified Chiropractic Assistant, or other license, based upon acts by the Certified Chiropractic Assistant or applicant that describes acts similar to this section. A certified copy of the record of suspension or revocation of the state making that is conclusive evidence thereof.