



Oregon

Theodore R. Kulongoski, Governor

Oregon Board of Chiropractic Examiners

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PUBLIC SESSION

Morrow-Crane Building

3218 Pringle Road SE, Large Conference Room

Salem, Oregon

March 15, 2007

Board Members TELECONFERENCED

Minga Guerrero, DC, President

Michael Vissers, DC Vice-President

Michael Megehee, DC

Steve Koc, DC

Cookie Parker-Kent, Public Member

Kevin Shuba, Esq. Public Member

Excused: Joyce McClure, DC Secretary

Staff Present

Dave McTeague, Exec Dir (Conferenced)

Michael Summers, Investigator

Kelly Bird, Administrative Assistant

Lori Lindley, AAG

Public Attendees

Sandra Burns DC, Judith Boothby DC and

Valerie Lamphere

12:30 pm CONVENE

ADOPTION OF THE AGENDA (Adopted as presented)

PUBLIC COMMENTS (Public attendees spoke to Discussion #4; see their comments below)

IN THE MATTER OF

Request to disclose peer review report (Case # 06-1043)

The Board proposed to deny disclosure of the peer review investigative report. Michael Vissers, DC moved to accept the board's determination; Michael Megehee, DC seconded the motion. Cookie Parker-Kent aye; Michael Vissers, aye; Michael Megehee, aye; Minga Guerrero, aye; and Kevin Shuba, aye. Steve Koc recused.

(Case # 06-1002) Disclosure request (Name of licensee will be included when appeals have been completed.)

The Board proposed to disclose the peer review committee's report (with patient's name redacted) and a copy of the Letter of Concern. Guerrero moved to accept the board's determination; Vissers seconded the motion. Vissers, aye; Megehee, aye; Shuba, aye; Parker-Kent aye; and Guerrero, aye. Koc recused

Joseph Shields DC (Case #05-1057)

The Board proposed to suspend the licensee earlier this year, and he is to be enrolled in a mentoring plan. The licensee is not yet participating, so the Board proposed that if the licensee is not participating in a mentoring program by April 12, 2007, the Executive Director is empowered to issue an Emergency Suspension of his license until such time as he is participating. Vissers moved to accept the Board's determination; Megehee seconded the motion. Vissers, aye; Megehee, aye; Shuba, aye; Parker-Kent aye; and Guerrero, aye. Koc recused

06-1053 & 06-1057 Cheri Barry CCA

The Board proposed to revoke the chiropractic assistant's certification for multiple violations. Megehee moved to accept the Board's determination; Shuba seconded the motion. Vissers, aye; Megehee, aye; Shuba, aye; Parker-Kent aye; Guerrero, aye; and Koc, aye.

Case # 2007-1000

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

Case # 2007-1003

The Board determined insufficient evidence to find a violation; Send a letter of concern. Koc moved to accept the Board's determination; Parker-Kent seconded the motion. Vissers, aye; Megehee, aye; Shuba, aye; Parker-Kent aye; Guerrero, aye; and Koc, aye.

Case # 2007-1005

The Board found no statutory violation, however a letter of concern will be sent to the licensee. Megehee moved to accept the board's determination; Cookie Parker-Kent seconded the motion. Vissers, aye; Megehee, aye; Shuba, aye; Parker-Kent aye; Guerrero, aye; and Koc, aye.

Case # 2006-3004

The board found no statutory violation; however, a letter of concern will be sent to the licensee. Parker-Kent moved to accept the board's determination; Megehee seconded the motion. Vissers, aye; Megehee, aye; Shuba, aye; Parker-Kent aye; Guerrero, aye; and Koc, aye.

Case # 2006-1058, 2005-4001 Dorian Quinn, DC

The Board proposed to issue a \$1000 civil penalty for violations of the Oregon Doctors Title Act. Previous closed Case # 2005-4001 was reviewed for lack of compliance with previous insufficient evidence determination. Shuba moved to accept the board's determination; Parker-Kent seconded the motion. Vissers, aye; Megehee, aye; Shuba, aye; Parker-Kent aye; and Koc, aye. Guerrero recused.

Case # 07-2001 Philip Rodriquez

The Board proposed to issue a Cease and Desist letter for unlicensed practice. Koc moved to accept the Board's determination. Parker-Kent seconded the motion. Vissers, aye; Megehee, aye; Shuba, aye; Parker-Kent aye; Guerrero, aye; and Koc, aye.

Case # 07-5005 Chris Fowler, DC

In the same case, the Board determined to issue a Cease and Desist letter for aiding in the unlicensed practice of chiropractic. Koc moved to accept the Board's determination. Shuba seconded the motion. Vissers, aye; Megehee, aye; Shuba, aye; Parker-Kent aye; Guerrero, aye; and Koc, aye.

Case # 07-5002

The Board determined insufficient evidence to determine a violation on the basis the doctor has come into compliance. Shuba moved to accept the Board's determination. Vissers seconded the motion. Vissers, aye; Megehee, aye; Shuba, aye; Parker-Kent aye; Guerrero, aye; and Koc, aye.

Case # 2006-2000 Karen Kelsall, DC

The Board proposed to issue a Letter of Reprimand for violations as recommended by the peer review report. Vissers moved to accept the board's determination. Parker-Kent seconded the motion. Vissers, aye; Megehee, aye; Shuba, aye; Parker-Kent aye; and Guerrero, aye. Koc recused.

Case # 2006-3001 Ron Clifton, DC

The Board proposed a Letter of Reprimand and six hours of continuing education in record keeping for violations found in the peer review report. Shuba moved to accept the Board's determination. Vissers seconded the motion. Vissers, aye; Megehee, aye; Shuba, aye; Parker-Kent aye; Guerrero, aye; and Steve Koc recused.

DISCUSSION ITEMS

1. Strategic Plan discussion: Board Governance Policy

Dr. Guerrero explained the concept of board governance. She also mentioned that there is an upcoming board member training which will discuss the idea of governance. The Governance section of the OBCE Strategic Plan explains the Board/Executive Director relationship, it identifies the job of the Executive Director and limitations in that position, the manner in which the Board is run and its limitations. At the May meeting, we will discuss the Professional Competency, including continuing education,.

2. Policy Issue: 2007 Legislative issues

Dave provided the board copies of testimony regarding a bill that would require a board to make a preliminary finding that a case merits further investigation, before we can do an investigation. This would be very cumbersome and not conducive to processing complaints efficiently. (*This bill is now dead.*)

He addressed SB 898 introduced by Senator George which proposes limitations on the board regarding the scope of its investigations. Specifically, it says that the Board may not investigate any matter beyond what is specifically complained about. Kevin Shuba and Dr Guerrero will plan to attend that hearing.

There is also a bill regarding changes to the mandatory reporting of child abuse. It may require DCs to report child abuse if there is a belief that abuse is *likely* as opposed to actual.

Senate Bill 357 sponsored by Senator Morrisette is a CAO bill to set minimal standards to perform spinal manipulation. The Physical Therapist Board still appears to allow some type of manipulation. PTs are doing grade five mobilizations, which is a lot like chiropractic. Dave will be meeting with lobbyists Vern Saboe (CAO), Bob Olsen, and Mike Mason (ODOC) next week. The lobbyists will talk with the Governor's office. To summarize, there are two bills, one that identifies the minimum requirements to provide manipulation, and the second one would put the prohibition on performing chiropractic back into the PT law.

Dr. Guerrero updated the board on matters regarding the Oregon Schools Athletic Association. (*The following is a clarification of the facts from Dr. Guerrero. After checking with Dr. Rominick [who was actually present at the meetings and has copies of correspondences with the OSAA], the following correction is submitted.*)

Two years ago, an insurance representative came to speak to the coaches at a public school and advised the schools not to let chiropractors do athletic physicals. Dr. Rominick told the agent that chiropractors can do these exams by law. To date, we are aware that this action has not been corrected in a statewide notice to all the schools both private and public. This violates fair trade and the scope of practice laws in our state. In another incident last fall (2006), the OSAA sent an email with attachment to athletic directors at schools both public and private, with a list of who is allowed to “return an athlete to play” after a suspected concussion injury. The list purposely excludes chiropractors and includes professions with lesser educations.

Legislatively, there are other bills to give the State Department of Education regulatory over the OSAA for other reasons. Shuba added that the issues are unrelated to the “return to play” matter. WSCC President Joe Brimhall agreed to make statements regarding our minimum educational requirements. Dr. Guerrero will agree to make statements from the public safety standpoint. In addition, Ron Romanick is prepared to talk about public access, restriction, and violations of Fair Trade. At this point, we are watching, but will report any happenings.

3. Policy Issue: Spinal Decompression/traction advertising claims

Advertisers are making recommendations to use inappropriate billing codes for these treatments. The Board’s Press release regarding the “NASA Medical Breakthrough” stated that the Board “would review other advertising statements which the Board believes are misleading.” Dr. Guerrero suggested each board member propose statements that we would like to consider disapproved. Kevin Shuba reminded the board to be careful of statements which may restrict free trade. Continue this discussion in May 2007. Lori Lindley will research past AG advice on First Amendments rights.

4. Work Session: ETSDP Committee report on EPMX-SCIO device

(In relation to the audiotape this discussion was addressed immediately after In the Matters of)

Dr. Burns addressed the board first. At the last meeting, The Board asked Dr. Burns to draft a list of “programs” that she would not perform on patients with the EPMX-SCIO. She handed out a copy of her written comments, including these exclusions: past life regressions, distant work (a.k.a. radionics), and anything that “smacks of diagnosing.”

She clarified that she is only currently advertising “biofeedback” and avoids making claims that cannot be backed up.

She also provided a copy of a waiver she intends to provide her patients. In response to the Board’s previous questions regarding program updates, she called the manufacturer. The machine she owns is in the same state as it was when the FDA approved it. However, it also has additional capabilities. The “upgrades” are currently being considered by the FDA’s Investigational Review Board (IRB). Dr. Burns will provide the Board with her contact’s information. Dr. Burns concluded her comments.

Valerie Lamphere, Dr. Burns’ patient, spoke next. She has been treated with the EPMX machine for sinus complaints and for her lower back. With the biofeedback treatment, she takes 30% less of her medication. She has never had a bad experience with the treatments.

Dr. Judith Boothby spoke after Ms. Lamphere and she too submitted a copy of her testimony. She recommends that the OBCE consider the “off label” use as allowed as a low-risk investigational device. She made contact with the FDA regarding “off-label” use. The FDA said off-label use is not

unusual, but they only regulate the commercial sale of products and not the practice of medicine. Her conclusion is that a doctor has the right to alter a device as long as it has a basic FDA approval. They also provided her a list of conditions for “non-significant risk devices.” Dr. Boothby concluded.

The Board discussed whether they should approve the device for programs beyond biofeedback. Dr. Koc asked if there is an Investigational Device Exception from the IRB, but Dr. Burns does not yet have that; She is waiting for it to come in the mail. Kevin Shuba agrees that we should have that.

Dr. Koc and Dr. Vissers are concerned about the manufacturer’s intention regarding “for personal use and not for resale.” The Board asked Dr. Burns to provide the manufacturer’s contract language showing the intentional use of the equipment. In other words, does “resale” refer to resale of use, or resale of hard equipment? Continue this discussion in May 2007.

5. Policy Issue: Laser/phototherapy for cosmetic treatments

The Board asked the assistant attorney general to give advice regarding the use of lasers for cosmetic purposes. We currently have a policy which the Board adopted several months ago stating that laser therapy for NMS conditions is standard. Shuba clarified that the scope of practice includes a treatment if a chiropractic college teaches it within the curriculum. Dave noted we have an ETSDP application from Dr. Srch for the “Intense Pulse Light” device which is used for laser hair removal and treating acne.

The Board determined laser (LLLT) treatments for purely cosmetic conditions (not NMS) are not within the chiropractic scope of practice unless it can be demonstrated that the specific application is taught at a CCE accredited chiropractic college. Dave will communicate the Board’s pending decision to the interested parties. The Board requested additional information concerning what is taught at WSCC, Texas Chiropractic or other chiropractic colleges. This issue is continued to the Board’s May 17th meeting.

6. Policy Issue: IME policy clarifications

The Board has a current policy, but Drs. Chuck Simpson and J. Michael Burke propose some minor changes. In brief, the current fourth paragraph is deleted; the fifth and eighth paragraphs are revised. The revised policy language will be an addendum to these minutes. This issue is carried forward to the May 17th meeting after further public notice.

7. Staff Report

- a) Dave got confirmation today from the W/C dept that our requested language was included in the proposed WC rule changes. Special Thanks to Linda Stockton for her work on this too.
- b) Typically, the Board meets with the Peer Review committee every six months, May 2007 is six months, so we could schedule meeting the committee again in May. This is tentatively scheduled for Portland.
- c) The September meeting will be scheduled for Pendleton (RESERVE rooms NOW because of the Pendleton Roundup)
- d) Board’s introduction to new licensees is set for Thursday April 4, 2007 with Drs Guerrero, Koc and David Corll as panel members.
- e) Dave is working on the Health & Wellness chapter of the Educational Manual
- f) Dave has been thinking about picking up another contract investigator to catch up on caseload.

CORRESPONDENCE

1. Shane Gofourth DC, question re CCA & Reike

Dr. Gofourth recently sent a letter to the Board asking if his certified CA may practice Reike, a form of massage therapy, in his office without his supervision. The Board concluded that the certified CA may perform this type of massage, if and only if the supervising DC is also Reike trained and on premise. He then may supervise the CCA performing the Reiki. If the certified CA is also an Oregon licensed massage therapist, then that is already allowed with the LMT scope of practice.

2. Joseph Graffeo DC, question re CCA & Kinesio Taping Method

Dr. Graffeo submitted a request asking the Board if a certified CA is allowed to perform “Kinesio Taping.” The Kinesio Taping Method involves taping over and around muscles in order to assist and give support to, or prevent, over-contraction. The Board determined if the supervising DC is trained in the taping method, that he or she may also train the certified CA also to perform the method in the clinic, and only while the DC is on premise. The Board considers this a physiotherapy modality.

2:40 pm ADJOURN

(The OBCE is offering the language changes below to be further considered at their May 17, 2007 meeting); draft updated on March 19, 2007

OREGON BOARD OF CHIROPRACTIC EXAMINERS

Guide to Policy & Practice Questions (Excerpt)

INDEPENDENT ~~MEDICAL~~ CHIROPRACTIC EXAMINATIONS (I.M.C.E.)

There is one standard for all chiropractors, whether they be, examining, treating, consulting or rehabilitating chiropractors. A professional relationship exists between the patient and the chiropractor, regardless of whether the chiropractor is the examining or treating doctor.

Regardless of the role, the chiropractor is expected to perform an appropriate chiropractic examination based on the patient's current and past complaints, the manner of onset, and the elicited history. From this the chiropractor will make a diagnosis and determine any further procedures or tests necessary to clarify the diagnosis and/or prognosis. These may include, but not be limited to: diagnostic imaging, laboratory testing, or other specialized studies. If indicated, the evaluating chiropractor will propose any of the following: a recommended course of further care, a timeframe for reevaluation, treatment options or referrals; or discharge from care when appropriate.

All examinations should include a "functional chiropractic analysis." The Board has always assumed this was inherent in the P & U Guidelines, even though it was not included as specific language. The Board also stated that diagnosis should be based on pertinent history and examination findings, and reflected in the record. (6/20/96)

~~The issues arising out of an OBCE action in 2002 resulted in the following agreement between the OBCE and the respondent chiropractic physician. The OBCE now adopts this as policy effective November 18, 2004.~~

~~a.~~ The doctor/patient relationship between examiner and the examinee is limited to the examination, the opinion, and the review of the relevant patient history and medical records provided; and does not include ongoing treatment monitoring. **Reasonable effort should be made by the examiner to obtain all known relevant records/tests/films relating to the patient/injury/condition and previous treatment history before opining. When requested, the treating doctor should provide all relevant treatment records/reports/films in order to fully cooperate with the third-party review.**

The examiner shall make important health information, diagnosis and treatment recommendations available to the patient, treating doctor, and patient's legal counselor or guardian via the independent report. Upon receipt of a signed written request from the patient or patient's legal guardian, a copy of the examination report shall be made available as indicated in the request. This could be to the patient and/or any other party designated by the patient.

~~b.~~ An independent chiropractic examiner should review the dictated medical opinion of a fellow panel member of an independent or insurer examination for its accuracy and completeness, and when necessary to clarify biomechanical or chiropractic reasoning, the independent chiropractor examiner should supplement the dictated medical opinion with his or her independent chiropractic opinion.

The independent chiropractic examiner is responsible to ensure retention of the entire ICE patient record for the required period as per OAR 811-015-0005 (3). This includes any and all intake

forms, examination forms, correspondence pertaining to the examination, and the examiner's reports, This does not include the treating doctor's records.

Administrative Rule 811-015-0010 (Clinical Justification) also governs the conduct of independent examinations.

Workers' Compensation IMEs. The Oregon Workers Compensation Department (OWCD) is required to maintain a list of providers authorized to perform independent medical evaluations (IMEs) for workers' compensation claims as a result of SB 311 (2005). The OWCD director may remove a provider from the list after a finding of violation of standards of professional conduct for workers comp IME claims. Health professional licensing boards may adopt such standards or if they don't the default standards are published by the American Board of Independent Medical Examiners (ABIME). The OBCE considered this issue at their May 18, 2006 meeting and decided to accept the ABIME standards (below) and also submit to OWCD the OBCE's policy as additional applicable standards for ICMEs performed by chiropractic physicians.

ABIME Guidelines of Conduct: Physicians should:

1. Be honest in all communications
2. Respect the rights of the examinees and other participants, and treat these individuals with dignity and respect;
3. At the medical examination:
 - Introduce himself/herself to the examinee as the examining physician;
 - Advise the examinee they are seeing him/her for an independent medical examination, and the information provided will be used in the assessment and presented in a report;
 - Provide the examinee with the name of the party requesting the examination, if requested;
 - Advise the examinee that no treating physician-patient relationship will be established;
 - Explain the examination procedure;
 - Provide adequate draping and privacy if the examinee needs to remove clothing for the examination;
 - Refrain from derogatory comments; and
 - Close the examination by telling the examinee that the examination is over and ask if there is further information the examinee would like to add.
4. Reach conclusions that are based on facts and sound medical knowledge and for which the examiner has adequate qualifications to address;
5. Be prepared to address conflict in a professional and constructive manner;
6. Never accept a fee for services which are dependent upon writing a report favorable to the referral service; and
7. Maintain confidentiality consistent with the applicable legal jurisdiction.

(Updated 3/15/07)