



Oregon

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Oregon Board of Chiropractic Examiners

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Public Session Minutes

Western States Chiropractic College

Hampton Hall Conference Room

2900 NE 132nd Ave

Portland, Oregon

May 15, 2008

Members Present

Minga Guerrero, DC President

Michael Vissers, DC Vice-President

Joyce McClure, DC Secretary

Steve Koc, DC

Cookie Parker-Kent, Public Member

Michael Megehee, DC

Staff Present

Dave McTeague, Executive Director

Kelly Edmundson, Administrative Assistant

Michael Summers, Investigator

Lori Lindley, Assistant Attorney General

Others Present: Jen Oregon Medical Association,
and Sharron Fuchs, DC

CONVENE 2:00 PM

ADOPTION OF THE AGENDA – Added to the Agenda: Is the OBCE required to provide an interpreter for non-English speaking applicants? Agenda adopted.

IN THE MATTER OF

Case #s 05-1037 & 05-1038 The Board determined insufficient evidence to find a violation. Joyce McClure moved to accept the board's determination; Cookie Parker-Kent seconded the motion. All in favor. Michael Vissers, aye; Steve Koc, aye; Cookie Parker-Kent aye; Mike Megehee, aye; Minga Guerrero, aye and Joyce McClure, aye.

Case #s 08-1006 & 08-3000 The Board proposed case closed with a letter of concern. Joyce McClure moved to accept the board's determination; Michael Vissers seconded the motion. All in favor. Michael Vissers, aye; Steve Koc, aye; Cookie Parker-Kent aye; Mike Megehee, aye; Minga Guerrero, aye and Joyce McClure, aye.

Case # 07-5019 The Board determined insufficient evidence with letter of concern about informed consent. Michael Vissers moved to accept the board's determination; Cookie Parker-Kent seconded the motion. All in favor. Michael Vissers, aye; Steve Koc, aye; Cookie Parker-Kent aye; Mike Megehee, aye; Minga Guerrero, aye and Joyce McClure, aye.

Case # 08-1001 The Board determined insufficient evidence to find a violation with a strongly- worded letter of concern to be sent. Joyce McClure moved to accept the board's determination; Cookie Parker-Kent seconded the motion. All in favor. Michael Vissers, aye; Steve Koc, aye; Cookie Parker-Kent aye; Mike Megehee, aye; Minga Guerrero, aye and Joyce McClure, aye.

Case # 08-1008 Jorge Torres

The Board proposed to issue a Notice of Proposed Letter of Reprimand for violations of ORS 684.100 unprofessional conduct. Mike Megehee moved to accept the board's determination; Michael Vissers seconded the motion. All in favor. Michael Vissers, aye; Steve Koc, aye; Cookie Parker-Kent aye; Mike Megehee, aye; Minga Guerrero, aye and Joyce McClure, aye.

Case # 08-2001 The Board determined no statutory violation. Michael Vissers moved to accept the board's determination; Cookie Parker-Kent seconded the motion. All in favor. Michael Vissers, aye; Steve Koc, aye; Cookie Parker-Kent aye; Mike Megehee, aye; Minga Guerrero, aye and Joyce McClure, aye.

Case # 08-5018 The Board is authorizing an evaluation post a medical incident; Michael Vissers moved to accept the board's determination; Joyce McClure seconded the motion. Michael Vissers, aye; Steve Koc, aye; Cookie Parker-Kent aye; Mike Megehee, aye; Minga Guerrero, aye and Joyce McClure, aye. (Subsequently the doctor submitted to the evaluation voluntarily.)

Case #s 07-1044 & 07-1049 The Board proposed case closed. Cookie Parker-Kent moved to accept the Board's determination; Michael Vissers seconded the motion. Michael Vissers, aye; Steve Koc, aye; Cookie Parker-Kent aye; Mike Megehee, aye and Joyce McClure, aye. Minga Guerrero is recused.

Case # 08-5012 Nelda Perez, certified chiropractic assistant

The Board proposed to issue a Notice to Suspend the chiropractic assistant license. Minga Guerrero moved to accept the Board's determination; Steve Koc seconded the motion. Michael Vissers, aye; Steve Koc, aye; Cookie Parker-Kent aye; Mike Megehee, aye; Minga Guerrero, aye and Joyce McClure, aye.

Case # 08-5015 Leslie Rutherford, chiropractic assistant applicant

The Board proposed to set conditions on the CA license re: a previous South Dakota conviction. The applicant must submit to two to four urinalyses per year for the next two years. Steve Koc moved to accept the board's determination; Cookie Parker-Kent seconded the motion. Michael Vissers, aye; Steve Koc, aye; Cookie Parker-Kent aye; Mike Megehee, aye; Minga Guerrero, aye and Joyce McClure, aye.

Case # 2007-2010

The board determined case closed on a contingent basis that the licensee agrees to complete ten (10) hours in billing and coding CE within 45 days. Joyce McClure moved to accept the board's determination; Cookie Parker-Kent seconded the motion. Michael Vissers, aye; Steve Koc, aye; Cookie Parker-Kent aye; Mike Megehee, aye; Minga Guerrero, aye and Joyce McClure, aye.

Case # 2007-1050 The Board accepted the Peer Review Committee's report, and proposed case closed. Michael Vissers moved to accept the Board's determination; Joyce McClure seconded the motion. Michael Vissers, aye; Steve Koc, aye; Cookie Parker-Kent aye; Mike Megehee, aye; Minga Guerrero, aye and Joyce McClure, aye.

PUBLIC COMMENTS Dr. Sharon Fuchs made comments during the Rule Hearing.

DISCUSSION ITEMS

1. Staff Report

- **OBCE Leg. Concepts** House Health Committee proposals
Dave McTeague reports: The House Health Committee held a hearing on May 6. They had discussions about changes to health regulatory license boards - We were concerned that they may want to consolidate the boards; it is still a potential issue, but they seemed to be moving away from that as a serious proposal after they heard from the legislative counsel attorney; There are real problems with any consolidation. They identified some issues which should be addressed - one important issue is the authority for the Governor to remove licensing board members for misconduct (i.e. board members serve at the pleasure of the Governor).
- The House Health Committee's Chair Greenlick is a strong advocate for more public members on boards. He has proposed a policy of "50% minus one" (calculate the number of board members [7] times 50%, and subtract one; in our case it calculates to 2.5 public members). We already have two, so we are standing well.
- Impaired/Diversion programs - They are problematic. The idea is that if a doctor gets addicted as a result of their easy-access (i.e. MDs, nurses, pharmacists etc.), they should be treated as a medical problem, not a disciplinary problem. With some of these diversion programs, practitioners who have a substance abuse problem are still seeing patients, and the licensing boards may not be aware of it. The House Health Committee is interested in consolidating all of these diversion programs, but every profession has a slightly different way of addressing the issue, so it is a very complex matter.
- Board per diem – there is going to be a proposed law which allows the health licensing boards propose a higher board member per diem through the budgeting process - up to a max of \$250.
- Traffic Crash Report – The OBCE is proposing that traffic crash reports be "less than a public document" to prevent their use for marketing purposes. The Governor's office subsequently denied this proposal for OBCE's sponsorship. Sen. Monnes-Anderson is expected to introduce this legislation.
- The Administrative Law section of the Oregon State Bar is proposing that licensees be given an opportunity for a full hearing on competency examination orders. Plus they may also be pushing that administrative law judges (ALJs) have Final Order authority, which means the OBCE board proposes a disciplinary action, it goes to contested case hearing, and the ALJ makes the decision, not the regulatory board.
- The OBCE's bill for malpractice reporting has been approved to go forward.

2. Public Hearing on Proposed Administrative Rules: 2:30 p.m.

Dr. Guerrero opened the public hearing for comment to amend the following rules.

- Contrast Imaging - The proposed amendment clarifies that DCs can order, but not perform, contrast imaging with radio-opaque substances.

Discussion: A couple members did not want to change the language, but want to keep it allowing DCs to order and/or perform radi-opaque substances because there is language in the statutes that would potentially conflict with the administrative rules; it was felt it would be better to have everything consistent even though it is a bit antiquated in terms of what people actually practice today. We discussed adding new language that DCs may order, or refer for contrast studies. The latter is the only change the RAC recommended.

Dr. Guerrero moved to accept the change to the X-ray rule; Dr. Megehee seconded the motion. All in favor. Michael Vissers, aye; Steve Koc, aye; Cookie Parker-Kent aye; Mike Megehee, aye; Minga Guerrero, aye and Joyce McClure, aye.

- Amend Certified Chiropractic Assistants rule by adding unprofessional conduct language

Discussion: Dr. McClure reported that the RAC had a lengthy conversation about CCAs dating the clinic's patients. There was a lot of discussion that a CCA has some elevated status (creating an imbalance of power); with the exception of Dr. Fuchs, most of the RAC members felt it is the supervising chiropractor's responsibility to monitor this issue, and set the rules for the practice. . Nobody felt it was appropriate for any unprofessional conduct happen, but rather than going into the detail about sexual relationships, it should be specified more broadly in terms of "respectful relationships." One RAC member presented the scenario of a young CA working in a small town with only one chiropractic office; that CA would be treating a large portion of that population and it would inhibit their ability to enter into any relationship with anyone in town. We also talked about putting a time limit or time frame for not dating a patient, but the discussion became very complex.

3:15 PM Dr. Guerrero closed the Rule Hearing for comment.

Sharron Fuchs, DC and RAC member spoke. She was a lone dissenter in the vote to allow CCAs to date patients (except if there was a previous relationship, or if there was another CA that could treat that patient). Dr. Fuchs had recommended that the CCA not have access to the patient's chart. The CCA is licensed and regulated by the board not by the supervising DC. Also, the State of Washington had guidelines including an explicit definition of sexual misconduct, which she thought was very clear that the behavior was not allowed. Dr. Fuchs called the Washington board, and talked with the Nursing Board investigator. They would address power issues, breach of confidentiality, etc. Dr. Fuchs decided from that conversation that it is NOT okay to date your patients. She would like this board (Oregon) to make a decision to adopt the unprofessional conduct language into the CA rule.

Dr. Guerrero is sensing that the majority of the board feels that CA's may date their patients, with exceptions; the language needs to be ironed out a bit more. Dr. Vissers proposed that the RAC meet one more time, but Dave added that he was not comfortable with that option at this time. Dr. McClure added that the consensus was that setting limits is okay, but it is hard to quantify. She did not get the sense that people were opposed to *any* change. The problem is that we are trying to represent what may be going on with all chiropractors in the state versus a few extreme examples.

In conclusion, the board decided to table any decision to a future meeting (July).

3. Strategic Plan Review

This issue will be held over to July's meeting.

4. Ethics & Jurisprudence Exam update, progress report

This issue will be held over to July's meeting.

5. ETSDP: Committee report on Rapid Eye Technology

The ETSDP finished their discussion of the Rapid Eye Technology. There are two parts to RET; there is Immediate Release Technique (IRT) which is simple and easy for chiropractors to do and can be taught in an easy fashion (standard). Then there is RET, which is the more complicated form of this technique, that the ETSDP committee felt should be reserved for counselors, psychologists, and people in another field – outside the scope of chiropractic. The Committee voted to allow education credit for both the RET and IRT. The only question is, does the board accept the ETSDP's recommendation to accept RET (and IRT) for continuing education? Mike Megehee moved to accept the ETSDP's recommendation to accept RET and IRT for continuing education credit. Michael Vissers seconded the motion. Michael Vissers, aye; Steve Koc, aye; Cookie Parker-Kent aye; Mike Megehee, aye; and Minga Guerrero, aye. Joyce McClure is opposed to the use of IRT (or RET) for chiropractors; she agrees to allow the credit for the continuing education credit.

6. FCLB Report: Dr. Guerrero

Briefly, Dr. Guerrero informed the Board that CIN-BAD is going world-wide. She also asked the Board members to review her report, and specifically page 3. The FCLB attendees talked about reporting their Executive Meetings, and they outline what needs to be done – the pros and cons.

7. ADDED (Policy) Discussion:

English proficiency for chiropractic assistants - Does the board want to establish a minimum English language proficiency requirement for chiropractic assistants? Dr. McClure recommended following the other regulatory boards' requirement (policy, rule or statute) that "licensees" be English-speaking at least. What is the ADA's stand about licensure? Dr. Guerrero will check with the ADA's expectations.

Dr. McClure moved to make a policy that all CA applicants should be proficient (read) in English in order to certify as a chiropractic assistant in Oregon. (There was no second; motion did not pass.) Staff is to draft a policy. The CA open-book test is given in English, and an applicant must be able to read (and complete) the application and exam.

In closing, Dave asked the Board about appointing Drs. Brent Smith (Salem) and Chris Osterlitz (Eugene) to the Rules Advisory Committee. Board members were in favor of the addition.

CORRESPONDENCE

1. Dennis Nowack DC sent a letter regarding American Chiropractic Network.

This issue will be held over to July's meeting.

3:40 PM ADJOURN