



Oregon

Theodore R. Kulongoski, Governor

Oregon Board of Chiropractic Examiners

3218 Pringle Road SE, Suite 150

Salem, Oregon 97302-6311

(503) 378-5816

FAX (503) 362-1260

E-mail: Oregon.obce@state.or.us

Web: www.oregon.gov/OBCE

Public Session Meeting Minutes

Morrow-Crane Building

1st Floor Large Conference Room

3218 Pringle Rd SE

Salem, OR 97302

May 21, 2009

Members Present

Michael Vissers, DC President

Joyce McClure, DC Vice-President

Michael Megehee, DC Secretary

Minga Guerrero, DC

Steve Koc, DC

Cookie Parker-Kent, Public Member

Douglas Dick, Public Member

Staff Present

Dave McTeague, Executive Director (Teleconference)

Kelly Beringer, Admin Assistant

Donna Dougan, Admin Assistant

Tom Rozinski (Investigator)

Lori Lindley, Assistant AG

Katie Hambelton, Office Specialist

Others: Sharron Fuchs, DC

1:05 PM

ADOPTION OF THE AGENDA

Dave McTeague thanked Dr. Guerrero for a great job while on the board, and Dr. Michael Vissers presented her with the board's plaque of appreciation, while reviewing her contributions. The topic of Breast Thermography was added to the agenda.

PUBLIC COMMENTS

Dr. McClure asked that this brief discussion be added to the agenda. The Oregon Chiropractic Association (OCA) requests OBCE's input for their upcoming work session. The focus is board issues versus association issues. Joyce read her list of ideas and the discussion produced the following for the Association's consideration.

- CA training levels (may need to be increased)
- Continued need to improve chart note quality/legibility
- Continuing education vs. professional competency
- Standardization of diplomate/credential certification
- Advertising professionalism
- Billing and coding as a professional association issue
- Create an insurance relations committee to interface with third party payers

Dr. Guerrero also sent an email to the OCA suggesting that they pick one association member (lobbyist or chair of legislative counsel) to keep OBCE informed especially with time sensitive matters. That communication could go primarily to the Executive Director and Board President.

DISCUSSION ITEMS

1. Policy Issue: 2009 Legislation

There was a development last week in which the Governor called for the suspension of several health licensing boards, and suggested a possible merger of health-related licensing boards. This is in the context of the state government budget woes. It is not known at this time how serious a proposal this actually is, but staff is following these discussions and will keep the board posted.

The OBCE sponsored HB 2240 – malpractice reporting - passed both the House and Senate and was signed by the Governor. The OBCE's budget has also been passed and signed into law. HB 2118, which in part, gives the Governor more authority over health board directors, is expected to pass.

2. ETSDP Committee Report: Contact Reflex Analysis

There was proposed language to create a policy on CRA. The OCA (Dr. Robert Taylor) asked the OBCE to hold off making any decision.

Dr. Guerrero is the chair of the ETSDP committee, and she feels that this whole issue revolves more around errors of the licensee, and not a problem with the technique. The complaint is more about failure to clearly explain the procedure rather than the procedure itself. Dr. McClure does not see that waiting another couple months will harm the public. However, the OCA needs to provide more than just a request to do nothing.

Dr. Koc said that this technique has been around a long time and he is not certain that there needs to be a policy made. Dr. Megehee agrees; it's a technique. If a doctor hurts someone, it's a malpractice case. Where are we going to draw the line – what about other techniques – SOT, kinesiology, etc? What other technique have we addressed this way?

The board agreed to put a mention in the next BackTalk that any technique is not a stand-alone procedure. (Consider adding a statement at the beginning of the Policy and Practice Guide's Technique section – Any technique is not a stand-alone procedure.).

3. Policy Issue: SEMG & Inclinometer testing by CAs/Any Trained Person

[Current Policy: EMG And Surface EMG Testing - Any trained individual, including certified chiropractic assistants, may apply electrodes and conduct surface EMG testing, but the doctor has to interpret the results. (11/16/95, 7/18/96)]

The first question is: Does the board want to change the current policy (above)? The Board determined that it does not want to change this policy.

[Current Policy: Computerized Muscle And Inclinometer Testing - Certified Chiropractic Assistants may not do computerized muscle or inclinometer testing. The Board considers this to be part of the physical examination. (9/21/00)]

The second question is: Does the board want to change the policy for computerized muscle testing and inclinometer readings? Dr. Megehee would agree to allow putting on probes, or recording results, but not interpreting. The question is – is this recording data or interpreting data? Board members agree that computerized muscle testing and inclinometer use are policy discussions for a future meeting – part of the discussion may be to add this to the *initial training requirements*.

4. Policy Issue: IME Policy question for cities that border state lines

Dr. Guerrero brought this before the board after having discussed it with Mark Sutton, DC of the QAC in Washington. There are only a handful of IME doctors who do this – they are located in Washington, but do IMEs on Oregon-treated patients. Dr. Sutton says it is a slippery slope because it is legal to do an IME in their state. However, some Oregon DCs pointed out to Drs. Guerrero and Sutton that Oregon DCs may perform physical therapies, but Washington State DCs are not licensed to use physical therapies; and yet they are making comments in their IME reviews such as “the patient does not need ultrasound” and other therapies. Admittedly, some of these DCs were trained in the use of physiotherapies at WSCC. Dr. Sutton said he would like our board to contact the Washington board, and create language that says, “IME’s performed on Oregon patients must be done by licensed Oregon chiropractors.”

Lori Lindley is concerned about a constitutional challenge because of interstate travelling rights, and she worries about us delegating authority to Washington when we shouldn’t.

Lori did suggest that this would be something the Board could discuss with the insurance companies. Dave commented that this would be possible if there was an association insurance relations committee that was interfacing with the insurance industry then this would be a good topic to bring to the table; but this is a mechanism that we don’t have. Dr. Vissers suggested that this be added to the OCA list (discussed in Public Comments today). Dr. Guerrero will talk to Mark Sutton about the Board’s discussion.

5. Policy Issue: CA Initial Training Requirements

Dr. McClure recommends that CAs be trained only by people licensed to use the equipment of which they are training the use. It needs to be somebody who has a good fundamental understanding of what the indications and contraindications are, and can put that in relative perspective in terms of severity. It might be better if the trainer is a DC, PT, MD, or similarly trained person. Dr. McClure is not sure if she would exclude a long-time certified CA; however, she would exclude an LMT.

Dr. McClure pointed out that the problem she sees with the LMT teaching, if she were a CA only, she could only train on the machine with someone supervising her; so she cannot train on the machine. And if she is training with the machine off, then that is fundamentally important to the training. The CA needs to have the experience on the machine.

Dr. Vissers proposed a policy change that a trainer give (e.g.) five hours of lecture, and the employing DC give the practical training. Dr. McClure agrees with this suggestion. Most CAs are not familiar with all of the equipment in the office anyway. This means the CA could not be certified prior to employment. Board members do not think the hiring DC will be concerned that the newly hired employee is not yet certified; since s/he would only need to do the training, and send in the paperwork – thereby finalizing the CA application/licensure training.

To address the instance/s where an applicant may be employed in a clinic which does NOT implement hydro-, physio- or electrotherapy, the Board suggested that the supervising DC give the training for those modalities s/he DOES use. If or when the CA goes to a different clinic, then they need to “repeat” the two hours practical training. You make the hands-on training to be in the therapies that are performed in that clinic; if they move to another clinic, they have to do additional training.

Dr. McClure will work with staff to draft policy language (and/or rule language). Hold over this issue until the July meeting.

6. FCLB Report

Dr. Megehee reported on the recent FCLB annual conference in Hollywood. There was one breakout session addressing consistency of disciplinary actions. Decisions have to be defensible to many different constituents – other members of our profession, the victim, the legislature, the news media, the general public, etc. What is our definition of consistency? Similar situations are treated alike. There is a legal importance to that, but we need to have individual fairness; it needs to be proportional to fit the ‘crime’. We need to have a structure to our thinking.

Things to consider are: The nature of the misconduct - is it predatory or reckless behavior?; was it dishonest, or simply negligent behavior? Consider the nature of the harm done? Is it tangible or intangible? Physical? Was it emotional? Did it decrease public confidence in our profession? What is the severity of the harm? What is the number of victims? Has there been prior discipline history? Is there remorse? Something to think about is rehabilitation. Is there impairment (physical, drug or alcohol abuse)? Similar cases – are they really similar?

Dr. Megehee feels that we should look at these issues more. Coincidentally, Dr. McClure was working on the matrixes - regarding aggravating and mitigating circumstances, and will forward her ideas to the board.

Another presentation was put on by a representative of the Department of Transportation to discuss the program in which Dr Megehee has been participating, and he was awarded a presidential recognition award for his work on the DOT.

Some of these presentations are available from the FCLB website (www.fclb.org).

(Dr. Sharon Fuchs left.)

7. Ethics & Jurisprudence Exam workshop June 18th

The OBCE’s workshop is scheduled to be held at the Wilsonville Holiday Inn. Dave hopes at least one more board member will participate; Dr. Vissers is attending. We need facilitators too for the breakout groups. We are hoping to have 100 or more draft questions to start the workshop. Cookie Parker-Kent may be able to participate.

8. Staff Report (Radiation Protections Services meeting)

A few weeks ago, Dave met with Beverly Harger, DC, DACBR and the Radiation Protective Services staff. They asked for input from regarding gonadal shielding issues. They go into chiropractic offices and they review six to ten films. It is frequently noted that shielding is not used on pelvis views of females. That was concerning to them. They want to understand the accepted protocols for the profession; Dr. Harger helped with that. The current rule states, generally, that a DC may take a pass on shielding if the shielding would interfere with the diagnostic area of interest.

The RPS also shared their updated form that they give out to the medical clinics that they visit so they have something to share with the staff who takes these views. There is nothing to do at this time.

9. Added Discussion: Breast Thermography

Dr. Fuchs read an Oregonian article about a clinic shut down in Medford for unlicensed practicing and unsupported claims; the people were posing as numerous medical professionals. The clinic in Medford was saying that they could detect breast cancer with thermograms at least seven to eight years sooner than mammograms. This discussion came up on the OregonDCs listserve, and Dr. Fuchs asked and found out that yes, there is at least one Oregon DC doing thermograms. She approached the DC that was doing it to ask him/her to come before the board. She would like to have the issue presented to the ETSDP committee. Thermograms should be used in adjunct to mammograms, not a diagnostic.

Dr. Guerrero restated Dr. Fuch's request for clarification – she would like the ETSDP committee to review breast thermography, and maybe develop a policy statement as to how it should/should not be used by chiropractors.

Dr. Dean Clark performs thermography; and is part of an ACA council. Dr. Megehee took a course at WSCC course taught by Dr. Michael Underhill; he's been doing it for 20 years. In conclusion, the board will continue to review this matter. Dave added that there is a packet of information on this issue in the board's packet. This issue will be reviewed by the ETSDP committee once sufficient information is received on this topic.

CORRESPONDENCE

1. Dennis Nowack DC, re: American Chiropractic Network (review again)

Most of the Board has been undecided about writing a letter condemning ACN's practices. Dr. McClure had drafted a letter quite a while ago to ACN, but we need to find it. We are concerned about public protection because a patient may not be receiving appropriate care because of being cut off.

2:20 PM ADJOURN to PUBLIC SESSION 2:20 PM

3:45 PM RECONVENE TO PUBLIC SESSION

IN THE MATTER OF

Continuing Education - Leau Fuchs DC

The Board proposes a \$550 civil penalty for violations of our CE rule - \$250 for false affidavit, and \$300 (\$50/hour for each of six hours incomplete CE. Michael Vissers moved to accept the determination; Cookie Parker-Kent seconded the motion. All in favor. Michael Megehee aye; Minga Guerrero, aye; Joyce McClure, aye; Steve Koc, aye; Doug Dick, aye; Cookie Parker-Kent, aye; and Michael Vissers, aye.

Tatyana Starostenko, CA Applicant

The board proposes to license the applicant with standard provisions for notifying chiropractic employers regarding criminal conviction history. Michael Vissers moved to accept the determination; Cookie Parker-Kent seconded the motion. All in favor. (The applicant signed the Consent Agreement.) Case #09-1005 The board proposes a determination of case closed. Michael Vissers moved to accept the board's determination; Cookie Parker-Kent seconded the motion. All in favor. Michael Megehee aye; Minga Guerrero, aye; Joyce McClure, aye; Steve Koc, aye; Doug Dick, aye; Cookie Parker-Kent, aye; and Michael Vissers, aye.

Case #09-1008 - The board proposes Insufficient Evidence to find a violation with a letter of concern. Minga Guerrero moved to accept the determination. Cookie Parker-Kent seconded the motion. All in favor. Michael Megehee aye; Minga Guerrero, aye; Joyce McClure, aye; Steve Koc, aye; Doug Dick, aye; Cookie Parker-Kent, aye; and Michael Vissers, aye.

Case #09-1011 - The board proposes Case Closed with a Letter of Concern. Michael Megehee moved to accept the determination; Cookie Parker-Kent seconded the motion. Michael Megehee aye; Minga Guerrero, aye; Joyce McClure, aye; Steve Koc, aye; Doug Dick, aye; and Cookie Parker-Kent, aye. Michael Vissers is recused.

Case #09-1015 - The board proposes Insufficient Evidence to find a violation with a Letter of Concern. Steve Koc moved to accept the determination. Cookie Parker-Kent seconded the motion. All in favor. Michael Megehee aye; Minga Guerrero, aye; Joyce McClure, aye; Steve Koc, aye; Doug Dick, aye; Cookie Parker-Kent, aye; and Michael Vissers, aye.

Case #08-2002 - The board proposes No Statutory Violation with a letter. Joyce McClure moved to accept the board's determination; Michael Vissers seconded the motion. All in favor. Michael Megehee aye; Minga Guerrero, aye; Joyce McClure, aye; Steve Koc, aye; Doug Dick, aye; Cookie Parker-Kent, aye; and Michael Vissers, aye.

Case #09-3015

The board proposes a contingent case closed pending an Agreement of Voluntary Compliance for a mentor plan to include weekly chart reviews for six months to make sure the SOAP notes are complete, with reports from the mentor, and random file reviews. Joyce McClure moved to accept the board's decision; Minga Guerrero seconded the motion. All in favor. Michael Megehee aye; Minga Guerrero, aye; Joyce McClure, aye; Steve Koc, aye; Doug Dick, aye; Cookie Parker-Kent, aye; and Michael Vissers, aye.

Case #09-3012 - The board proposes Insufficient Evidence to find a violation with a Letter of Concern which will be copied to the WA board. Michael Megehee moved to accept the determination. Joyce McClure seconded the motion. All in favor. Michael Megehee aye; Minga Guerrero, aye; Joyce McClure, aye; Steve Koc, aye; Doug Dick, aye; Cookie Parker-Kent, aye; and Michael Vissers, aye.

Case #09-3013 - The board proposes Case Closed. Douglas Dick moved to accept the board's determination; Michael Vissers seconded the motion. All in favor. Michael Megehee aye; Minga Guerrero, aye; Joyce McClure, aye; Steve Koc, aye; Doug Dick, aye; Cookie Parker-Kent, aye; and Michael Vissers, aye.

Case #09-5003 Randall Fish, DC

The board proposes conditions on license regarding the licensee's convictions for alcohol, and domestic violence issues. Proposed conditions are for finished treatment for anger management and substance abuse; continue counseling once every two weeks, with board-approved counselor for one year following, random UA's for up to one year, including a random ETG test. Cookie Parker-Kent moved to accept the board's determination; Joyce McClure seconded the motion. All in favor. Michael Megehee aye; Minga Guerrero, aye; Joyce McClure, aye; Steve Koc, aye; Doug Dick, aye; Cookie Parker-Kent, aye; and Michael Vissers, aye.

Case #08-3015 Andrew Cha, DC

For multiple violations as determined by the peer review committee, the board proposes probation for three years with random file reviews, 12 hours additional CE on billing and coding issues; four hours additional CE on x-ray to be completed within 60 days, and a provision to limit treatment of PIP patients for two months; thereafter, the treatment plan has to be reviewed by the mentor. All the standard mentor provisions that we have with the mentoring program, and a \$2000 civil penalty. Mentor will oversee the doctor for one year after which time the OBCE will reconsider the matter. Joyce McClure moved to accept the board's determination. Michael Megehee seconded the motion. Minga Guerrero, aye; Joyce McClure, aye; Steve Koc, aye; Doug Dick, aye; Cookie Parker-Kent, aye; Michael Megehee aye; and Michael Vissers, aye. Steve Koc is recused.

3:55 PM ADJOURN