



Oregon

John A. Kitzhaber, MD, Governor

Oregon Board of Chiropractic Examiners

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PUBLIC SESSION MEETING

OBCE Administrative Office,

Morrow Crane Building,

3218 Pringle Road SE

Second Floor Conference Room

May 17, 2012

Members Present

Ann Goldeen DC, President

Daniel Coté DC, Vice-President

Douglas Dick, Secretary, Public Member

Huma Pierce DC

Christine Robinson DC

Todd Bilby DC

Cookie Parker-Kent, Public Member - Excused

Staff Present

Dave McTeague, Executive Director

Donna Dougan, Administrative Assistant

Tom Rozinski, Investigator

Lori Lindley, Assistant Attorney General

Shari Barrett, Office Specialist

Others Present: Don Ferrante DC, and Jan Ferrante

CONVENE 12:30 pm

ADOPTION OF THE AGENDA

PUBLIC COMMENTS

IN THE MATTERS OF

Sara Champion, CA Applicant

The Board proposed to issue the chiropractic assistant license with the standard disclosure stipulations. Daniel Coté DC moved to accept the Board's determination; Doug Dick seconded the motion. All in favor. Christine Robinson DC, aye; Todd Bilby DC, aye; Ann Goldeen DC, aye; Huma Pierce DC, aye; Daniel Coté DC, aye; and Doug Dick Public Member, aye.

Case #2012-3007 The Board proposed Case Closed with a letter of concern to the doctor - Come into compliance. Doug Dick moved to accept the Board's determination; Todd Bilby DC seconded the motion. Six members in favor; Daniel Coté is opposed. Motion passed. Robinson, aye; Bilby, aye; Goldeen, aye; Pierce, aye; and Dick, aye. Coté, opposed.

Case #2012-1017 The Board found no statutory violation in this matter. Christine Robinson DC moved to accept the Board's determination; Huma Pierce DC seconded the motion. All in favor. Bilby, aye; Goldeen, aye; Pierce, aye; Dick, aye; Coté, aye; and Robinson, aye.

Case #2012-1014 The Board proposed Case Closed with a letter of concern. Doug Dick moved to accept the Board's determination; Daniel Coté seconded the motion. All in favor. Bilby, aye; Goldeen, aye; Pierce, aye; Dick, aye; Coté, aye; and Robinson, aye.



Case #2012-3000 The Board found no statutory violation, however, a letter of concern will be sent to the doctor. Daniel Coté moved to accept the Board's determination; Doug Dick seconded the motion. All in favor letter of concern all in favor. Bilby, aye; Goldeen, aye; Pierce, aye; Dick, aye; Coté, aye; and Robinson, aye.

Case #2012-1016 The Board found no statutory violation; a letter of concern will be sent. Huma Pierce moved to accept the Board's determination; Daniel Coté seconded the motion. All in favor. Bilby, aye; Goldeen, aye; Pierce, aye; Dick, aye; Coté, aye; and Robinson, aye.

Case #2011-2006 The Board found insufficient evidence to find a violation. Todd Bilby moved to accept the Board's determination; Doug Dick seconded the motion. All in favor. Bilby, aye; Goldeen, aye; Pierce, aye; Dick, aye; Coté, aye; and Robinson, aye.

Case #2011-1042 The Board found no statutory violation, however a letter of concern will be sent regarding the licensee's failure to respond in a timely manner to the Board's request for a response. Ann Goldeen moved to accept the determination; Todd Bilby seconded the motion. All in favor. Bilby, aye; Goldeen, aye; Pierce, aye; Dick, aye; Coté, aye; and Robinson, aye.

Case #2012-1019 The Board found no statutory violation with a letter of concern. Todd Bilby moved to accept the Board's determination; Daniel Coté seconded the motion. All in favor. Bilby, aye; Goldeen, aye; Pierce, aye; Dick, aye; Coté, aye; and Robinson, aye.

PUBLIC COMMENTS

Dr. Don Ferrante and Jan Ferrante made public comment regarding a tiered CA licensing concept. They brought books for the Board to look at to evaluate what they propose. They are thinking of a 1st level 12 hour program; a second level 40/50 hour program, and a 3rd level which includes the Medical Assistants (MA with extensive training). Tennessee is the model they would like to follow; they are looking for continuity in training. Can individual chiropractors give the 12 hours initial training outside of the Board's pre-approved trainers? (*No.*)

Dr. Goldeen added that the OCA will need to get involved to get the statute changed for the different levels of CA certification. Dr. Ferrante would like the Board to tell them what to do. Fees are an issue – something that needs statutory change. Dr. Coté suggested that Dr. Ferrante contact the Florida Board because they have a tiered system. MAs do not have a scope of practice in Oregon, they work under the MDs license. Only 11 states regulate Chiropractic Assistants right now. He also suggests he contact Donna Liewer at the FCLB. Dr. Ferrante asked whether there are any objectionable issues the Board may have. Dr. Goldeen would not be in favor of CAs/MAs taking the initial history. Jan Ferrante stated that they are not trying to change the basic CA for doctors opposed to change. A tiered system will allow the CA to move up. The books they brought are "Chiropractic Therapy Assistant," "A Clinical Resource Guide," and "Chiropractic Therapy Assistant" with a workbook.

Dr. Coté added, if we are going to give CAs/MAs more freedom, broaden the scope, there needs to be more verification/supervision of training (initial or continuing education).

Board members encouraged Dr. Ferrante and Jan to obtain more information (from Florida) begin to move forward on this idea. Ferrantes left at 1:00 pm.

DISCUSSION ITEMS

1. Proposed Rules discussion: Any Trained Person issues; billing identifiers, supervision

What are we trying to do with this? Are we trying to redefine “any trained person” or is this about the billing - Identify who does the service in the box.... In case of “Dr. X” the board said “you shall provide direct supervision for the personal trainer who is working with your patients,” which means the DC is physically present and available, however there is not a lot of administrative rule support for that decision. Dave explains that policies are the further amplification of an existing rule; not strongly enforceable. We need to write a proposed rule to further define this policy. The Board discussed that patients who are recovering from acute injuries require the direct onsite supervision of the physician.

Coté – Basically, if you are billing for somebody else’s services they should have their own NPI number in the provider section, or they are under your direct physical supervision in your office. Direct supervision means the DC should be available within a 1-2 minutes response time (*not necessarily in the same room, but the same building?*). Dr. Pierce feels that a good prescription for exercises should not require the 1-2 minute response time. Coté - The NPI means he did the service, or it was performed under his direct supervision; his LMT was doing work under her own NPI. So what about athletic trainers; they don’t have an NPI... Coté: Why don’t we do a Power Poll through FCLB?, “Send copies of your direct supervision rules” so we don’t have to re invent the wheel. Tom added that a rule is needed because we are seeing more often inappropriate relationships such as, LMT’s owning a clinic and then hiring DCs to use their NPI for PIP fraud. Bilby - what if a DC sends the patient to a massage facility and then he is doing the business out of his own office and the only relationship is the referral? Coté: if he uses his own NPI, then it is fraud. Dave: a smart attorney will come back and look at the board’s rules. Dave quotes Other Licensed Health Providers (OAR 811) which was adopted a number of years ago.... Coté : To bill for their services, they either have their own NPI number, or they were directly supervised by the DC.

Dave refers to the HCFA form instructions. 24J – NPI of rendering or supervising provider. Rendering provider is the person who sends the bill in! not necessarily the provider of the service as one might presume. And, these are “guidelines.” Coté: We need to look at what other states have done. Continue the discussion at next meeting.

2. Continuing Education outline for 2013 record keeping requirement

Board members had a copy of the Record Keeping outline to review. Coté- someone commented that the one hour testing of the soap notes would be difficult. Dave: If we do an online course, can we give a comprehensive online exam in lieu of the one hour chart example? Yes, give the attendee a scenario to chart. Ann, Dave, Todd reviewed case statistics - about 10 of 26 (38%) final orders address chart noting in some fashion. Dr. Bilby is drafting a BackTalk article but he would like 3-5 years’ final orders and letters of concern to see the volume of chart noting/record keeping complaints.

Dr. Coté moved to adopt the Record Keeping CE course outline draft as revised. Huma Pierce seconded the motion. All in favor. Robinson, aye; Bilby, aye; Goldeen, aye; Pierce, aye; Coté, aye; and Dick, aye.

3. Policy Issue: Licensee Lookup and proposed board actions

Carried forward from the last meeting. Dave believes we should add the Notices of Proposed Discipline to the online licensee lookup; however, there are those who oppose this move. Todd Bilby moved to accept the Board’s proposal to report “Pending” cases to the Licensee Lookup. If there is a pending case, then the viewer is directed to contact the Board. Doug Dick seconded the motion. All in favor. Bilby, aye; Goldeen, aye; Pierce, aye; Dick, aye; Coté, aye; and Robinson, aye.

4. Budget issues update

After preparing for the Emergency Board, the budget analysts said we weren't far enough into our biennium to come to them yet. Our next opportunity is in September. We did get support from the OCA.. Next step budget-wise is the Governor's 10-year plan, and a revenue forecast. We've proposed a part-time professional staff person; along with a modest fee increases necessary to fund that request.

Policy issue regarding Board Per Diem. A question was posed regarding our April telephone meeting –is it appropriate to pay the full per diem for the “in-between phone meetings;” they were not in our budget. Discussion. Daniel Coté moved to eliminate per diem reimbursements for board conference calls which are less than (approximately) three hours in length. Doug Dick seconded the motion. All in favor aye. Bilby, aye; Goldeen, aye; Pierce, aye; Dick, aye; Coté, aye; and Robinson, aye.

5. Legislative Concepts update

Dave submitted an LC which will take fees out of statute; Dave will probably add the late renewal CA penalty added to that. It will probably go before the House Health Committee and Senate Health. The OCA will need to help us with this. Dave said we will need make tough decisions for managing our budget (Tom needs a chiropractic consultant; and Dave has thought about excluding the AAG from attending meetings.). Contested cases and appellate cases have cost a lot. If licensee fees increase, when will that go into effect? Probably, the latter half of 2013; it will require a rulemaking process, then, go into effect the first of January 2014. Regarding semi-independence – the Governor's Office hasn't stated their position yet. Their will be a loss of revenue to the Department of Administrative Services, and that might be an issue too. Dave recommends board members speak to their legislators about all these issues.

6. Policy Issue: CA applicants, low level arrest/conviction history (Carried forward)

The Board reviewed staff's draft policy language. Dr. Coté wants to see all felony cases and requests it be removed from this section (move to bulleted items section). Dr. Coté moved to accept the policy as modified (move #4); Todd Bilby seconded the motion. All in favor. Bilby, aye; Goldeen, aye; Pierce, aye; Dick, aye; Coté, aye; and Robinson, aye. The policy is attached to the end of these minutes as an addendum.

7. Policy Issue: Fee-Splitting policy amendment, proposal to allow actual Merchant Fees

We need to clarify the statement regarding “merchant fees” – for example, if someone books an appt for you and the patient pays with a credit/debit card, the credit card company will back charge you - that is a merchant fee. Daniel Coté made a motion to clearly define “merchant fees” as those related fees directly related to debit or credit cards charged by the credit card company. Doug Dick seconded the motion. All in favor. Bilby, aye; Goldeen, aye; Pierce, aye; Dick, aye; Coté, aye; and Robinson, aye.

The adopted policy will read,

Merchant Fees (Visa, MasterCard, Discovery card charges)

The OBCE does not consider it a violation of the fee-splitting rule for an advertiser to charge a merchant (i.e. chiropractic clinic) for the actual costs related to “merchant fees.” Typically these run in the 2 to 3% range of the purchase cost. Merchant fees specifically relate to the typical charges that vendors, such as those listed above, charge the merchant for the cost of using their credit card transaction service.

Secondarily the Board needs to draft a policy for online sales of coupons. This draft proposal reads,

“**Online sales of coupons.** Online sales of coupons or other services in which the prospective patient/customer pays a fee which then is shared between the advertising and the chiropractic clinic business are a violation of 811-035-0015 (24) Splitting fees or giving or receiving a commission in the referral of patients for services.”. Following this ruling many of these advertisers modified their program to a flat rate advertising contract which does not violate this rule.”

Doug Dick moved to accept the board’s two policies for merchant fees and online sales of coupons; Todd Bilby seconded the motion. All in favor. Coté, aye; Goldeen, aye; Pierce, aye; Bilby, aye; Dick, aye; and Robinson, aye.

2:00 PM

Rule Hearing on Proposed Amendments to OAR 811-010-0110, Chiropractic Assistants

Dr. Goldeen opened the rule hearing. Dave noted for the record that draft 2 of this proposed rule is in the board’s packet with comments from the Rules Advisory Committee. Draft 2 includes a change to shorten the life of the application from 1 year to 6 months. Daniel Coté moved to adopt Draft 2 of the proposed rule 811-010-0110 with the minor change (life from one year to six months); Christine Robinson seconded the motion. All in favor. Coté, aye; Goldeen, aye; Pierce, aye; Bilby, aye; Dick, aye; and Robinson, aye. Staff will file the adopted rule.

No public attended to make comment. The Rule Hearing closed at 2:05 pm

8. Proposed Amendments to OAR 811-001-0010, Rules of Procedure in Contested Cases

Lori Lindley spoke to the Board on this issue. This is a matter of cleanup – the APA was changed, effective January 31 2012, so the requirement for agencies to have an answer is no longer valid unless the agency has a specific case where an answer is necessary. and put all their affirmative defenses into an Answer within 30 days. She proposes that we still want an answer on are the sexual boundary cases because we want to know what their defenses are. The response is called an Answer to Notice of Proposed Discipline. Huma Pierce moved to go into rulemaking to clean up the Rules of Procedure in Contested Cases rule. Christine Robinson seconded the motion. All in favor. Bilby, aye; Goldeen, aye; Pierce, aye; Dick, aye; Coté, aye; and Robinson, aye.

9. FCLB/NBCE report (Dr. Coté)

It was a very good meeting. A number of topics covered include:

1. Regarding websites
 - a. A couple of states have developed “apps” for licensee lookups
 - b. The general consensus was that PDF fillable complaint forms are a good thing
 - c. It was suggested the agency do focus groups to evaluate its website. Pick 9 people to utilize our site and see if they can do it; have them tell us what they think; gives a fresh perspective.
2. Missouri is broadcasting its Public meeting online.
3. Some states are lowering their fees to reduce government sweeping.
4. Suggestions from Daniel:
 - a. Every two years, any DC, even established DC’s, can get one hour of CE for online ethics and jurisprudence.
 - b. Re: the new doctor meetings – some boards give a couple scenarios of actual cases, and ask the

new doctors to be board members and go through the process. What would you do? What are your questions? How would you punish this doctor?

- c. UK, NZ Board, and Australian Board – there is a big movement to create an equivalent testing level fore exit exams (similar to NBCE’s parts I - IV) to increase mobility between countries. The first meeting is in September in Perth.
5. Australia:
 - a. Of all the nine provinces, they have changed to one “super board” and unified the scope of practice;
 - b. Australia and NZ now have student registration; they are licensed; the board can take action if they violate the laws/rules;
 - c. Australia and NZ have English language proficiency requirements;
 - d. Australia, chiropractors are not allowed to advertise discounts or testimonials; they can fine up to \$5000 per infraction, per individual (max: \$30,000)
 - e. Australia sends sexual boundaries to a tribunal, not the Board. The tribunal has a judge, and three chiropractors from the field.
6. Canada - some of the provinces require the agreement of the complainant in its proposed actions.
7. CEO of *mycourse* (Steve Forman) each state should pass rules for web-based CE - disallow watching multiple courses at once; incorporate interactive parts to the course to insure that the DC is there; require all courses pages be seen before the test can be done; should be times; questions should be random; have an electronic signature with a picture of the doctor – all to make sure its secure.
8. Medicare - Stephen Conway - an attorney and Chiropractor - said Medicare is performing audits and investigating chiropractic clinics. Patient must have an injury, otherwise it is considered “maintenance” and not covered by Medicare. Dr. Coté will pass this information on to OCA. Medicare is going to be checking everyone, but they are only after chiropractors right now. Chiropractic Physicians are the only ones who cannot turn down Medicare. See the ACA website for more information
9. The closing speaker (NCMIC rep) publicly congratulated us (Oregon Board) for our travel to treat law. FCLB is putting together a travel to treat task force to create a national registry.
10. Controversy with the Webster technique; Dr. Goldeen noted that there is a lot of conversation on the DC listserv.
11. NBCE meeting was like an episode of “Survivor.”
12. The District meeting is going to be in Salt Lake City, Utah September 20-23, 2012.

CORRESPONDENCE

1. Council on Chiropractic Education Australasia (CCEA)

Dave’s correspondence back to the Australasia College said that the applicants must be approved on a case by case. Also we are in the process of sending a letter to New Zealand.

RECONVEN To Executive Session

IN THE MATTERS OF (Continued)

Case #2011-3029 and Case #2011-3032 Huma Pierce DC and Christopher Pierce DC

The Board proposed two years file pulls, each licensee to complete 12 hours additional CE in charting and coding (to be completed within 3 months); and a letters of reprimand. Ann Goldeen moved to accept the Board’s determination; Doug Dick seconded the motion. Bilby, aye; Dick, aye; Goldeen, aye; and Coté, aye. Christine Robinson, nay. Huma Pierce is recused. Motion passed.

ADJOURN 5:00 PM

OBCE Policy: Licensing Chiropractic Assistants with low level arrest/conviction histories
(adopted May 17, 2012)

The OBCE delegates discretion to the Executive Director to approve (with Consent Orders for employer notification if needed) applicants for chiropractic assistant certification who have fully cooperated with providing information regarding past arrests or convictions provided where:

1. Those incidents are of lesser severity, i.e. which resulted in misdemeanors, diversions or were discharged with no conviction.
2. Those incidents were five (5) years or older.
3. The applicant provided a full explanation, as well as expressing appropriate remorse, and if required had fully engaged in appropriate rehabilitative activities.

Any application that reveals issues of a more serious nature or any failure to fully cooperate in providing information requires full board review at the next meeting. Those include:

- Any felony conviction.
- Anyone with an arrest or conviction of a “Crimes Against Persons” Crime. These crimes include, but are not limited to: Willful Murder, Negligent Homicide, Forcible Rape, Other Sex Offenses, Kidnapping, Robbery, Aggravated Assault, Simple Assault, Child Abuse, Elder Abuse, Domestic Violence (Including a lesser offense of any degree of assault), Prostitution, to include any associated crime, such as promoting prostitution.
- Anyone with an arrest or conviction of a “Crime of Theft or Identity Theft, within the last 5 years. These crimes include, but are not limited to: Embezzlement, Larceny, Forgery/Counterfeiting, or Fraud.
- Anyone with a conviction (or diversion) of a “DUII or Substance Abuse Related Offenses”, within the last ten years that fails to otherwise document successful completion of a treatment program and a clean bill of health in the intervening time of at least five (5) years..
- Anyone who is required by this or any other state to register as a Sex offender.
- Anyone who has been willingly, unintentionally or otherwise, untruthful on an application for licensure or renewal.
- Or any other incident which indicates a potential threat to public or patient safety.