



Oregon

John A. Kitzhaber, MD, Governor

Board of Chiropractic Examiners

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OBCE PUBLIC MEETING

Red Lion Hotel, 200 N Riverside Ave

Medford, Oregon

May 23, 2013

Members Present

Daniel Côté DC, President

Ann Goldeen DC Vice-President

Doug Dick, Public Member, Secretary

Todd Bilby DC

Christine Robinson DC

Glenn Taylor, Public Member

Jason Young DC

Staff Present

Dave McTeague, Executive Director

Kelly Beringer, Admin Assistant

Shari Barrett, Office Specialist

Tom Rozinski, Investigator

Lori Lindley, AAG

Others: Drs. Lisa Kouzes, Greg Blanchfill, Larry Hanberg, Dan Beeson, Matt Freedman, Christian Mathisen, Gary Reid, Joel Goldman, Stephen Drabik, Marc Heller, Frank Hurd, Mark Machala, and Joshua Fine

There will be an informal public meeting with chiropractic physicians at 8:00 a.m. to approximately 9:00 a.m.

CONVENE 9:00 AM

ADOPTION OF THE AGENDA - two discussions were added to the agenda – a brief mention of the effect of the Board’s policy decision regarding CAs performing myofascial release technique; and a second regarding Dr. Ann Goldeen’s conference FCLB report.

PUBLIC COMMENT

DISCUSSION ITEMS

1. Public Hearing - May 23rd, 2013, 9:00 a.m.

a. Pre Paid Treatment Rule Amendments, OAR 811-015-0002

Dr. Blanchfill agrees with the current draft except for the 90 day limitation. He has countless numbers of patients whose treatment goes well beyond that 90 days. Dr. Blanchfill recommends 12 months (at Dr. Côté’s request). Dr. Côté added that the Board are not opposed to repetitive treatment plans. Dr. Hanberg asked if it is standard practice to have a restriction on the timeline? He states, as long as the doctor is following proper care protocols there should not be a restriction. Dr. Hanberg read the OCA Pre-Pay Plan committee’s comments and recommendation. The committee concurs with the sections of Draft 4 but “strongly opposes” the 90 limitation. The committee recommends no timeline at all.

Doug added that the 90 days was suggested for the patient’s benefit – to re-evaluate whether the plan is working, etc. Dr. Goldeen added – doctors may terminate at any time and have a refund based on usual fees at the time. One of the things we’ve seen is patients are pressured into contracts with no rights. After so much time, and they don’t feel they need any more care, they’re out of luck. There are clearly abuses in the pre-pay plans we see. Dr. Hanberg feels that the issues the Board mentions are handled under paragraph 3 (refunds). Dr. Bilby added that if a patient wants out after three months, they are not



out as much as they may be in a year-long plan. Dave corrected that current language does not manage the issues – we need to define what usual and customary is. Someone on a pre-pay should be considered the same as a time of service person. Dr. Beeson suggested that the “standard fee” (usual and customary fees) be written right into the contract. Dr. Cote also suggested adding to (3) terminated by the doctor, and create the contract so the patient initials the clearly labeled “refund policy.” Dr. Bilby adds if there is a discounted rate in place it needs to be incorporated in. Dr. Goldeen suggests we hold off any adoption today, but take a look at the Massachusetts policy first. Dr. Hanberg agreed to work with Dr. Goldeen to draft some language regarding applying the discount for the “cash” pre-payment.

Schedule another rule hearing for July 2013; comments closed today at 9:35 am

b. Updates to the OBCE Guide to Policy & Practice Questions, OAR 811-010-0093

Dave reviewed with the Board what we to do today. Comments taken; hearing closed. Ann Goldeen moved to accept the final draft of the rule; Glenn Taylor seconded the motion to adopt these amendment. Amendment: change date to May 23, 2013. All in favor. Doug Dick, aye; Daniel Côté, aye; Christine Robinson, aye; Todd Bilby, aye; Ann Goldeen, aye; and Glenn Taylor, aye. Jason Young not present .

2. Policy discussion: “Master of the ship” rule concept

Summary of proposal: If a clinic owner has DCs working for them, the owner is still responsible to ensure that those licensees are complying with the law. We need to go into rulemaking to consider adopting a rule to manage this issue. Dave McTeague read the draft rule language:

Proposed new rule, Draft 1

811-010-0125 (follows majority ownership/control rule)

The chiropractic physicians holding an ownership position as described in OAR 811-010-0120 are presumed to be supervising the employees or other personnel who are providing chiropractic and associated care or services. As such they share responsibility to ensure those persons are complying with the provisions of ORS 684, OAR 811 and other applicable state and federal laws and rules.

Lori Lindley added to amend the rule - failure to abide by the rule could result in discipline. Dave is going to request a PowerPoll with the FCLB. Dr. Young questioned what would happen if a clinic owner attempts to correct issues occurring underneath them, but the licensee continues to act on their own? The owner should perform the duty to report. Jason Young moved to go into rulemaking; Christine Robinson seconded the motion. All in favor. Dick, aye; Goldeen, aye; Taylor, aye; Côté, aye; Bilby, aye; Young, aye; and Robinson, aye.

3. Policy discussion: Paper review record keeping rule concept

Dave attempted to draft some language (*this is an addition to the Records rule language*)

(3) A patient's original records shall be kept by the Chiropractic physician a minimum of seven years from the date of last treatment. There is no requirement to keep any patient records older than seven years; except if the patient is a minor, the records shall be kept seven years or until the patient is 18 years of age, whichever is longer.

(a) If the treating chiropractic physician is an employee or associate, the duty to maintain original records shall be with the chiropractic business entity or chiropractic physician that employs or contracts with the treating chiropractic physician.

(b) Chiropractic physicians performing independent medical examinations or written file reviews for third parties shall be responsible for keeping a record of all authored reports for 7 years from the date authored.

Board proposed to amend (b) to “or formal written file reviews, reports or notes, for seven years...” Doug also suggests “scanning.” Well, the proposal is not about the “storage” but it is the actual record.

Doug Dick moved to enter permanent rulemaking; Christine Robinson seconded the motion. All in favor. Goldeen, aye; Taylor, aye; Dick, aye; Bilby, aye; Robinson, aye; Young, aye; Public hearing in July.

4. Budget & Legislative issues update

We are making progress. The legislature has approved our part time chiropractor, etc. but our budget has not been yet approved. Dave is going to a hearing Friday May 24, 2013.

Regarding HB 2611 (passed both houses; waiting for Governor signature) provides that boards may develop rules requiring cultural competency CE. Dr. Robinson will draft an email/BackTalk article informing the field that there is an upcoming requirement.

5. Review / Approve Proposed Record Keeping courses (if any); policy issue CA credit?

- a) Southern California University of Health Sciences is co-sponsoring Croft’s whiplash injury program. Dr. Bilby noted that there is no billing and coding, or EHR. He’s trying to take one of his modules and fit it into our requirement (motor vehicle accidents). Board says no, it’s too general; it “does not meet OBCE requirements.” Provide a copy of the outline. The comments should be applied towards a general practice – not MVA.
- b) Can CAs get CE credit from the Documentation course. Dr. Robinson felt that CAs would not be charting. Dr. Young noted that some of the CA initial training does touch on billing and charting. The board voted to allow CA CE six hours CE for any documentation program.

6. Review / Approve Separation of Duties procedures

Staff created a report identifying money handling procedures and had the Audits Division review the processes. They made some suggestions for improvement which will be incorporated into the procedures.

ADDED Discussion We received an LMTs complaint that she was let go because the Board had determined that CAs may not perform myofascial release technique. Dr. Young thinks this opens a door – his issue is with CAs performing massage. Dr. Young recommends we create an additional certification for a CA similar to a “massage technician.”

ADDED Discussion: FCLB Report

Dr. Goldeen reported briefly on her attendance to the recent conference. We talked about things that make boards more effective such as trained leadership, being prepared, unstructured time, delegating authority, having and setting goals. In some ways, she feels that we don’t spend enough time training our new members; we should formalize our training process. The attendees talked about videotaping board meetings – live streaming. There have been instances of ransom persons showing up and videotaping

board meetings and posting revised versions on social media sites. Some boards have live-streaming video for attendees. The FCLB passed a resolution that states boards should adopt a rule mandating minimum malpractice insurance to protect the patient. Dr. Goldeen supports the requirement, and Dr. Côté suggests an FCLB PowerPoll on this issue.

There was more discussion on the National CA certification program. Eligibility – 18 years of age; high school graduation; good moral character; initial fees \$150; 24 hours training; and online test. They are rolling out the new certification. Dr. Cote would like to adopt the FCLB's certification program in addition to keeping our CA program. The exams will be held at testing sites, including Oregon. Plus Dr. Cote would like to show our support of this program. Check the FCLB's website for more information about the program.

Regarding the NBCE's Ethics and Boundaries exam; the Illinois board will be using the exam, plus other professionals, not just health professions. They will be providing the test all year long, and nationwide.

There was discussion about treating children – The Blue Cross of Massachusetts has ruled that they will not pay for chiropractic on children. NCMIC and others recommend that boards adopt a policy similar to “Chiropractic is appropriate for all populations” or “It is appropriate in for chiropractors in Oregon to treat children.” Dr. Côté agreed that a policy statement would be good, and Dr. Young added, include something similar to, “We recognize the positive effects of chiropractic on children, ...” And finally, at the conference there is still a push to define “telemedicine.”

Dr. Côté added that the District 1 & 4 meetings will be in Vancouver WA in September 19-22, 2013. Dr. Côté encouraged Board members and the Executive Director to go

7. Staff Report

The OBCE is currently scheduling a New Doctor Introduction for June 7; we need at least one more board member to commit to sitting on the panel. In addition, Dave added that we are scheduling for a strategic planning/regular board meeting in Cannon Beach - Friday-Saturday September 27-28.

11:10 AM ADJOURN to Executive Session

4:05 PM RE-CONVENE to Public Session

IN THE MATTERS OF **Continuing Education**

The Board proposed to withdraw Notices of Civil Penalty for **Deborah Cherachanko DC**; she had in fact complied. Ann Goldeen moved to accept the board's determination; Christine Robinson seconded the motion. All in favor. Doug Dick, aye; Glenn Taylor, aye; Jason Young, aye; Ann Goldeen, aye; Christine Robinson, aye; Daniel Côté, aye and Todd Bilby, aye.

The Board also proposed to withdraw Notice of Civil Penalty for \$250 for **David Young DC** as he did complete his boundary CE after all, although late. The Board directed staff to send a letter of concern. Jason Young moved to accept the Board's determination; Glenn Taylor seconded the motion. All in favor. Bilby, aye; Robinson, aye; Côté, aye; Dick, aye; Goldeen, aye; Taylor, aye and Young, aye.

Angela Holmes, Chiropractic Assistant Applicant

The Board proposed to license the CA applicant with stipulations to disclose her prior history to her current and future employers. Ann Goldeen moved to accept the Board's determination; Christine Robinson seconded the motion. All in favor. Taylor, aye; Dick, aye; Côté, aye; Young, aye; Robinson, aye; Goldeen, aye and Bilby, aye.

Case # 2012-5025 Brandon Duncan DC

The Board proposed to issue a notice of discipline for a \$2,000 civil penalty, 12 hours CE in (6) clinical justification, and record keeping; file pulls probation. Education to be completed in 90 days. Christine Robinson moved to accept the Board's determination; Jason Young seconded the motion. All in favor. Young, aye; Bilby, aye; Robinson, aye; Côté, aye; Goldeen, aye; Dick, aye; and Taylor, aye.

Related to the above case, the Board proposed to open three new cases – for the licensees sharing in the violations found in this case (2012-5025). Christine Robinson moved to accept the Board's determination; Jason Young seconded the motion. All in favor. Young, aye; Bilby, aye; Robinson, aye; Côté, aye; Goldeen, aye; Dick, aye; and Taylor, aye.

Case # 2012-3034 Christopher Fowler DC

The Board proposed to issue a notice of discipline for 12 hours CE – six each in billing and coding, and charting and clinical justification; a \$2000 civil penalty; a letter of reprimand, file pulls for two years and licensee must submit to the Board new clinical forms. Christine Robinson moved to accept the Board's determination; Jason Young seconded the motion. All in favor. Goldeen, aye; Taylor, aye; Bilby, aye; Dick, aye; Côté, aye; Robinson, aye; and Young, aye.

Case # 2012-3035 Felipe Rodriguez DC

The Board proposed to issue a notice of discipline for 12 hours CE six in billing and coding and six in charting and clinical justification; a \$2000 civil penalty, a letter of reprimand, file pulls for two years and licensee must submit a copy of his new clinical forms to the Board. Christine Robinson moved to accept the Board's determination; Jason Young seconded the motion. All in favor. Taylor, aye; Young, aye; Bilby, aye; Goldeen, aye; Robinson, aye; Côté, aye and Dick, aye.

Case #s 2013-1000, 1009 and 1031 The Board proposed case closed with a letter of concern. Jason Young moved to accept the Board's determination; Doug Dick seconded the motion. All in favor. Robinson, aye; Goldeen, aye; Taylor, aye; Dick, aye; Côté, aye; Bilby, aye; and Young, aye.

Case # 2012-2009 The Board proposed a contingent case closed with the stipulation that licensee submits a copy of a new file showing implementation of his new chart technique after attending this year's mandatory documentation/record keeping CE. Todd Bilby moved to accept the Board's determination; Doug Dick seconded the motion. All in favor. Young, aye; Taylor, aye; Robinson, aye; Goldeen, aye; Dick, aye; Côté, aye; and Bilby, aye.

Case # 2013-1028 The Board found no statutory violation. Jason Young moved to accept the Board's determination; Christine Robinson seconded the motion. All in favor. Taylor, aye; Robinson, aye; Bilby, aye; Côté, aye; Dick, aye; Goldeen, aye; and Young, aye.

Case # 2012-5021 Kimberly Guthrie DC

The Board agreed to a stipulated agreement in this case. Todd Bilby moved to accept the Board's determination; Glenn Taylor seconded the motion. All in favor. Robinson, aye; Taylor, aye; Dick, aye; Côté, aye; Young, aye; Goldeen, aye; and Bilby, aye.

Case #s 2012-3039, and 1048 The board determined case closed with a letter of thanks to the doctor for his corrective action. Ann Goldeen moved to accept the Board's determination; Christine Robinson seconded the motion. All in favor. Bilby, aye; Dick, aye; Taylor, aye; Young, aye; Côté, aye; Robinson, aye; and Goldeen, aye;.

Case # 2013-1022 The Board proposed a contingent case closed with a stipulation that licensee submit a copy of a patient file showing implementation of his new chart technique after attending this year's mandatory documentation/record keeping CE. Daniel Côté moved to accept the determination; Doug Dick seconded the motion. All in favor. Goldeen, aye; Robinson, aye; Côté, aye; Dick, aye; Taylor, aye; Young, aye; and Bilby, aye.

Case # 2013-1017 The Board determined a contingent case closed – licensee must complete two hours of a board-specified boundary course. Doug Dick moved to accept the determination; Jason Young seconded the motion. All in favor. Goldeen, aye; Dick, aye; Côté, aye; Taylor, aye; Young, aye; Bilby, aye; and Robinson, aye.

Case # 2013-1008 The Board found no statutory violation but will send a letter of concern about the quality of the DC's progress notes. Daniel Côté moved to accept the determination; Todd Bilby seconded the motion. All in favor. Dick, aye; Taylor, aye; Goldeen, aye; Robinson, aye; Young, aye; Bilby, aye; and Côté, aye.

Case # 2012-1058 Elliott Mantell DC

The Board found violations of the fee rule, and charting and clinical justification. The Board proposed to offer an Agreement of Voluntary Compliance noting these violations and a requirement to complete 12 hours CE in charting and clinical justification. Licensee must agree to not combine prepay treatment plans with insurance; and he must provide a revised pre-pay plan contract to the Board. Licensee must allow the Board to randomly perform file pulls on his prepayment plan files for two years. Ann Goldeen moved to accept the determination; Doug Dick seconded the motion. All in favor. Young, aye; Dick, aye; Côté, aye; Robinson, aye; Goldeen, aye; Taylor, aye; and Bilby, aye.

Case # 2012-1053 The Board determined insufficient evidence to find a violation; a letter of concern will be sent. Glenn Taylor moved to accept the Board's determination; Todd Bilby seconded the motion. All in favor. Young, aye; Goldeen, aye; Robinson, aye; Bilby, aye; Côté, aye; Dick, aye; and Taylor, aye.

Case # 2013-1021 The Board found no statutory violation. Glenn Taylor moved to accept the determination; Jason Young seconded the motion. All in favor. Goldeen, aye; Robinson, aye; Young, aye; Bilby, aye; Côté, aye; Dick, aye; and Taylor, aye.

Case # 2013 -1006 et.al. Sam Moursalian DC

The Board is agreeable to an interim stipulated order providing the DC accepts a chaperone, and agrees

to not have personal interactions with his patients and staff including no lunches, no gifts, no after-hours personal relationships. Daniel Côté moved to accept the determination; Ann Goldeen seconded the motion. Robinson, aye; Dick, aye; Taylor, aye; Bilby, aye; Côté, aye; and Goldeen, aye. Jason Young, nay. Motion passed.

Case # 2013-1029 The Board found no statutory violation. Glenn Taylor moved to accept the determination; Ann Goldeen seconded the motion. All in favor. Young, aye; Bilby, aye; Dick, aye; Robinson, aye; Goldeen, aye; Taylor, aye; and Côté, aye;

Case # 2013-1016 The Board found no statutory violation; but will issue a letter of concern – let the parents observe the treatment of their children. Jason Young moved to accept the determination; Ann Goldeen seconded the motion. All in favor. Bilby, aye; Robinson, aye; Young, aye; Côté, aye; Goldeen, aye; Dick, aye and Taylor, aye.

Case # 2013-1005 The Board found no statutory violation. Todd Bilby moved to accept the determination; Ann Goldeen seconded the motion. All in favor. Taylor, aye; Young, aye; Robinson, aye; Dick, aye; Côté, aye; Bilby, aye; and Goldeen, aye.

Case # 2012-1013 The Board proposed to withdraw the Notice of Proposed Discipline, but will subsequently refer the matter to the Peer Review Committee. Daniel Côté moved to accept the determination; Doug Dick seconded the motion. Goldeen, aye; Robinson, aye; Taylor, aye; Dick, aye; Bilby, aye; and Côté, aye. Jason Young abstained.

Case # 2013-1018 The Board proposed no statutory violation with a letter of concern. Doug Dick moved to accept the determination; Todd Bilby seconded the motion. All in favor. Robinson, aye; Taylor, aye; Young, aye; Côté, aye; Bilby, aye; Dick, aye and Goldeen, aye.

Case # 2013-1015 The Board proposed to amend the notice to include the allegations from the new complaint. Doug Dick moved to accept the Board's determination; Ann Goldeen seconded the motion. All in favor. Bilby, aye; Taylor, aye; Young, aye; Robinson, aye; Goldeen, aye; Dick, aye and Côté, aye.

Beyond that the Board discussed a global settlement position in the cases which the Board's AG is authorized to discuss with the doctor's attorney.

Case # 2013-2000 The Board proposed case closed. Ann Goldeen moved to accept the determination; Jason Young seconded the motion. All in favor. Bilby, aye; Goldeen, aye; Côté, aye; Young, aye; Taylor, aye; Dick, aye; and Robinson, aye.

Case # 2013-1020 The Board proposed a contingent case closed with a stipulation that licensee submit a copy of a patient file showing implementation of his new chart technique after attending this year's mandatory documentation/record keeping CE. Christine Robinson moved to accept the determination; Jason Young seconded the motion. All in favor. Robinson, aye; Taylor, aye; Young, aye; Côté, aye; Bilby, aye; Dick, aye and Goldeen, aye.

Case # 2012-3040 The Board found no statutory violation. The opinion predated the Board's earlier order. Daniel Côté moved to accept the determination; Jason Young seconded the motion. All in favor. All in favor. Bilby, aye; Goldeen, aye; Côté, aye; Young, aye; Taylor, aye; Dick, aye; and Robinson, aye.

Case # 2013-1009 The Board found no statutory violation; however, a letter of concern will be sent recommending licensee write off the small amount due. The opinion predated the Board's earlier order. Todd Bilby moved to accept the determination; Doug Dick seconded the motion. All in favor. Robinson, aye; Taylor, aye; Young, aye; Côté, aye; Bilby, aye; Dick, aye and Goldeen, aye.

Case # 2013-5006 Richard Sommers DC
The Board authorized staff to issue the Stipulated Final Order for a lowered civil penalty; licensee already paid \$350; however, the board will refund \$100 to the licensee \$100 based on a hardship waiver. Doug Dick moved to accept the determination; Todd Bilby seconded the motion. Côté aye, Goldeen, aye; Taylor, aye; Bilby, aye; and Young, aye. Robinson, nay; and Dick, nay. Motion passed.

Case # 2013-3008 The Board determined no statutory violation. Daniel Côté moved to accept the determination; Jason Young seconded the motion. All in favor. All in favor. Bilby, aye; Goldeen, aye; Côté, aye; Young, aye; Taylor, aye; Dick, aye; and Robinson, aye.

Case # 2013-3000 The Board determined no statutory violation; the offending consultant opinion predated the Board's previous instructions to that doctor concerning the same issues. Ann Goldeen moved to accept the determination; Christine Robinson seconded the motion. All in favor. Robinson, aye; Taylor, aye; Young, aye; Côté, aye; Bilby, aye; Dick, aye and Goldeen, aye.

Case # 2013-2002 The Board proposed contingent case closed with the provision that licensee agree to 10 hours mentoring and file review in six months. Christine Robinson moved to accept the Board's determination; Glenn Taylor seconded the motion. All in favor. Bilby, aye; Goldeen, aye; Côté, aye; Young, aye; Taylor, aye; Dick, aye; and Robinson, aye.

In closing today's meeting, Dr. Côté acknowledged the great contribution of Dr. Todd Bilby whose last meeting is today.

4:30 PM ADJOURN