



Oregon

John A. Kitzhaber, MD, Governor

Oregon Board of Chiropractic Examiners

3218 Pringle Road SE Suite 150

Salem, OR 97302-6311

Phone: (503) 378-5816

FAX: (503) 362-1260

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

www.oregon.gov/OBCE

Board of Chiropractic Examiners

University of Western States, Hampton Hall

2900 NE 132nd Ave

Portland, OR 97230

PUBLIC AGENDA

November 15, 2012

Members Present

Ann Goldeen DC, President

Daniel Cote DC Vice-President

Doug Dick, Public Member, Secretary

Todd Bilby DC

Christine Robinson DC

Glenn Taylor, Public Member

Huma Pierce DC, Excused

Staff Present

Dave McTeague, Executive Director

Kelly Beringer, Admin Asst

Shari Barrett, Office Specialist

Tom Rozinski, Investigator

Lori Lindley, AAG

Others: Drs. Dan Beeson and Larry Hanberg for the OCA; Ms. Kris Grogan (American Family Ins.)

CONVENE: 1:50 pm

ADOPTION OF THE AGENDA Approved as presented.

IN THE MATTERS OF

Michael J. Kirkland DC

The Board proposed to issue a letter of reprimand for two theft convictions in January and February 2012 which Dr. Kirkland self-reported. Dr. Ann Goldeen moved to accept the Board's determination; Dr. Daniel Coté seconded the motion. All in favor. Todd Bilby DC, aye; Christine Robinson DC, aye; Doug Dick, aye; Glenn Taylor, aye; Daniel Coté DC, aye and Ann Goldeen DC, aye.

Jonathan Hansel DC

The Board proposed to amend their Consent Agreement with Dr. Hansel to end his probation and make other adjustments. Doug Dick moved to accept the board's determination; Daniel Coté seconded the motion. All in favor. Bilby, aye; Robinson, aye; Goldeen, aye; Taylor, aye; Coté, aye and Dick, aye.

Case #12-2005 The Board determined no statutory violation. Daniel Coté moved to accept the determination; Christine Robinson seconded the motion. All in favor. Bilby, aye; Robinson, aye; Goldeen, aye; Taylor, aye; Coté, aye and Dick, aye.

Case #12-3024 The Board proposed no statutory violation with a letter of concern regarding his failure to include the patient's name on all charts. Doug Dick moved to accept the determination; Christine Robinson seconded the motion. All in favor. Bilby, aye; Robinson, aye; Goldeen, aye; Taylor, aye; Coté, aye and Dick, aye.

Case #12-1035 The Board proposed no statutory violation. Todd Bilby moved to accept the determination; Daniel Coté seconded the motion. All in favor. Bilby, aye; Robinson, aye; Goldeen, aye; Taylor, aye; Coté, aye and Dick, aye.



Case #12-5021 Kimberly Guthrie DC

The Board proposed disciplinary action including the licensee zero out the patient's existing balance of \$1056; complete 20 hours board-approved community service (offering free chiropractic services) within six months; complete and pass the NBCE's Ethics & Boundaries exam, also within six months. Todd Bilby moved to accept the Board's determination; Christine Robinson seconded the motion. All in favor. Bilby, aye; Robinson, aye; Goldeen, aye; Taylor, aye; Coté, aye and Dick, aye.

Case #11-2005 Brandon Hatch DC

The Board proposed to revoke the license. Christine Robinson moved to accept the Board's determination; Doug Dick seconded the motion. All in favor. Bilby, aye; Robinson, aye; Goldeen, aye; Taylor, aye; Coté, aye and Dick, aye.

Case #12-5005 Lance Hatch DC

The Board proposed to revoke the license. Christine Robinson moved to accept the Board's determination; Todd Bilby seconded the motion. All in favor. Bilby, aye; Robinson, aye; Goldeen, aye; Taylor, aye; Coté, aye and Dick, aye.

Case #12-1034 The Board determined no statutory violation with a letter of concern. Daniel Coté moved to accept the determination; Doug Dick seconded the motion. All in favor. Bilby, aye; Robinson, aye; Goldeen, aye; Taylor, aye; Coté, aye and Dick, aye.

Case #12-3026 The Board determined no statutory violation with a letter of concern. Daniel Coté moved to accept the determination; Christine Robinson seconded the motion. All in favor. Bilby, aye; Robinson, aye; Goldeen, aye; Taylor, aye; Coté, aye and Dick, aye.

Case #12-3030 The Board determined no statutory violation with a letter of concern. Daniel Coté moved to accept the determination; Todd Bilby seconded the motion. All in favor. Bilby, aye; Robinson, aye; Goldeen, aye; Taylor, aye; Coté, aye and Dick, aye.

Case #12-5019 The Board proposed no statutory violation. Ann Goldeen moved to accept the Board's determination; Glenn Taylor seconded the motion. All in favor. Bilby, aye; Robinson, aye; Goldeen, aye; Taylor, aye; Coté, aye and Dick, aye.

Case #11-2002 & Case #11-3034 Braxton Nguyen DC

The Board reviewed and accepted the Peer Review Committee's report. For excessive treatment the Board proposed to fine the licensee a \$5,000 civil penalty, payable within 90 days; licensee must complete a total 24 hours CE – including 12 hours in clinical justification, and 12 hours clinical record keeping (hours are in addition to his annual 20 hours and 2013 requirement), to be complete within 90 days. Random file pulls for three years will be administered by Affiliated Monitors, and licensee will be on probation for five years. Daniel Coté moved to accept the Board's determination in both cases; Doug Dick seconded the motion. All in favor. Bilby, aye; Robinson, aye; Goldeen, aye; Taylor, aye; Coté, aye and Dick, aye.

Case #12-2004 Timothy Pham DC

The Board proposed a \$2,000 civil penalty payable within 90 days; licensee must complete within 90 days 12 hours continuing education in billing and coding; and the Board will perform random file pulls over the next two years. Todd Bilby moved to accept the Board's determination; Christine Robinson

seconded the motion. All in favor. Bilby, aye; Robinson, aye; Goldeen, aye; Taylor, aye; Coté, aye and Dick, aye. (The Board will review this case again at their January meeting before issuing a notice.)

Case #12-3009 The Board proposed no statutory violation. Ann Goldeen moved to accept the Board's determination; Glenn Taylor seconded the motion. All in favor. Bilby, aye; Robinson, aye; Goldeen, aye; Taylor, aye; Coté, aye and Dick, aye.

Case #12-3033 The Board determined insufficient evidence to find a violation. Doug Dick moved to accept the determination; Glenn Taylor seconded the motion. All in favor. Bilby, aye; Robinson, aye; Goldeen, aye; Taylor, aye; Coté, aye and Dick, aye.

Case #12-2003 The Board proposed no statutory violation. Ann Goldeen moved to accept the determination; Daniel Coté seconded the motion. All in favor. Bilby, aye; Robinson, aye; Goldeen, aye; Taylor, aye; Coté, aye and Dick, aye.

Case #12-2006 The Board proposed no statutory violation. Todd Bilby moved to accept the motion; Glenn Taylor seconded the motion. All in favor. Bilby, aye; Robinson, aye; Goldeen, aye; Taylor, aye; Coté, aye and Dick, aye.

2:05 PM RULE HEARING

Dr. Goldeen opened the hearing with a brief explanation of the Board's need for the amendment. – the Board addresses complaints related to prepaid plans each board meeting, and the problem seems to be getting worse. The Board feels the language needs to change in order to address licensees putting their patients into plans they don't need, and what can be done when things go wrong.

Drs. Dan Beeson and Larry Hanberg (representing the OCA) appeared for comment on the proposed **Pre-paid Treatment** rule.

Drs. Beeson and Hanberg looked over the proposed rule with their attorney; in proposed Draft 2 paragraph (4) regarding the refund provisions, they propose putting together a subcommittee to establish a "standard" for the refund policy. The doctors like the Board's language in paragraphs 4(a) and 4(b). Referring back to paragraph 1(b) of Draft 2, the OCA is in a little disagreement with the proposed language "prohibited from submitting billings to third party payers." They asked for further explanation on the wording. Board members gave multiple examples of what licensees are doing – there is a lot of confusion. Again, the Board is open to suggestions.

And finally, the OCA doctors asked about paragraph (2), "Can 'wellness care' be added to the language?" The Board felt the existing broader language includes wellness care.

The OCA members proposed that an OBCE liaison (Dr. Coté) attend the subcommittee meeting and bring their recommendations back to the board. The Board agreed. Drs. Beeson and Hanberg left.

Regarding **License Suspension and Probation** Dr. Goldeen briefly explained to the public the need for the next rule – briefly closing a loophole where the licensee is on premise still giving advice etc. while suspended. Dr. Bilby asked about the situations where the licensees live in their clinic/home. Dr. Goldeen There was no additional public comment made on this rule. (Previously, Dr. John Collins commented in favor of the rule.) Board members briefly discussed Draft 2 but made no changes.

2:30 PM Dr. Goldeen closed the rule hearing.

DISCUSSION ITEMS

3. Proposed Rule Amendment for Pre-Paid Treatment Plans rule (post-Rule Hearing 2:00 p.m.)

No action; the rule is still open for comment.

4. Proposed New Rule Suspended and probationary DCs (post-Rule Hearing 2:00 p.m.)

Dr. Daniel Coté moved to adopt the proposed new rule OAR 811-015-0080 as written (Draft 2); Doug Dick seconded the motion. No discussion. All in favor. Ann Goldeen, aye; Doug Dick, aye; Christine Robinson, aye, Todd Bilby, aye; Glenn Taylor, aye and Daniel Coté, aye.

5. FCLB Regional Report: Dr. Coté

- In Washington they are creating rules which would require IME's to meet the minimum clinical standard – treating IME cases the same as the treating physician would (creating the doctor-patient relationship).
- Dr. Coté mentioned concerns expressed about “The Joint” – a national chain which reportedly contracts with patients - \$19 first month, \$59 for the month after with unlimited treatments. It was stated they do not perform exams, x-rays, etc. They don't require appointments; they hire a lot of new doctors and they pay the chiropractors \$7 per adjustment.
- In Alaska licensees report CE every two years with some specifics during those two year periods.
- Nevada and New Mexico require escrow accounts for pre-payment plans.
- Nevada is now creating a ticketing system for low-level infractions. Also Nevada only allows file reviews by a fully licensed Nevada licensee, it cannot be someone licensed in another state..
- In New Mexico they passed an extended pharmaceutical license for the primary care physician (DC) (The ICA is suing NM! http://www.chiropractic.org/2011/BCBS_Lawsuit_News_Release.pdf);
- Dr. Coté did a report on the “runaway” licensee (in lieu of disciplinary action); there was discussion about creating a national registry of sorts.
- South Carolina has a once a year meeting of their past board presidents; It's a brain-storming session, and they are a great source of information.
- In California there is a new franchise, “Brain in Balance.” The chiropractor who started this chain calls himself a “doctor” but he is no longer licensed. They do Functional Neurology training. He has been multiplying his clinics there and Nevada.
- The FCLB is looking into creating a national registry for diplomate status.

In closing, Dr. Coté reports that the FCLB/NBCE District meeting is next scheduled in early May 2013 in San Francisco (5/1-4/13). Dr. Coté suggests everyone go, including the public members. It's a great source of information. He added that most states look at Oregon to see how we handle issues. Dr. Coté hopes to attend.

6. Policy Issue: Colloidal Silver (carried forward from September)

Dr. Goldeen -. The ETSDP will review this. We are under the opinion that homeopathic solutions of colloidal silver are not within our scope. Dave stated the law currently says that homeopathic solutions are not within the scope; a licensee cannot mix the homeopathic substances/solutions. But colloidal silver is not homeopathic because the silver is suspended in the solution. However, OTC homeopathics are acceptable.

8. Policy Issue: Compounding OTCs (continued from July)

Dave talked to the Pharmacy Board with Lori Lindley and they started asking lots of questions. The Pharmacy Board needs to see that DCs have clear prescriptive authority before their pharmacists can

process requests from chiropractic physicians to compound various substances, including OTC drugs. Thus the law would need to be change. Pharmacists need legal authority from the chiropractor before they can mix the compound. This has been communicated to Dr. Marrone who brought this issue to the OBCE in July.

1. Budget & Legislative issues update:

a. Governor's Proposed Budget and Budget Policy Packages

The Budget Analyst agreed to most of our proposals including the fee increase; the halftime doctor position (health care investigator/advisor) is now proposed as a limited duration position although not at the salary level we requested. The request for additional AG funding approved. As regards additional funding for mentoring, it was proposed to move funds from our Office Expenses line item. Other packages were not approved (merchant fees, Department of Revenue collection fees) but could be considered in the future with additional information. The Governor's proposed budget (GRB) now goes the 2013 Legislature for their consideration.

b. Emergency Board request

Dave re-submitted the request asking for \$64,000; however the budget analysts are suggesting that we pull that back and fold it into the beginning legislative session budget bill. We are pulling back our E-Board request with this understanding.

c. Legislative Concept 321, taking fee maximums out of statute

Some form of this concept must pass in order that we can increase fees. This is a joint effort with the Board of Pharmacy as the only two health regulatory boards who still have fee maximums in statute. (Fees are still adopted by administrative rule in a public hearing process and reviewed by the Legislature retrospectively.)

Dave also reported there has not been any forward movement for independent agency status at this time.

Lori Lindley left for the day.

7. Peer Review Committee interviews & appointments

After interviews today, the Board appointed Dr. Seth Alley as the 1st placement for Peer Review Committee; Dr. Scott Bernhard was appointed as the 2nd placement; Dr. Peter Macris was appointed as the 3rd placement effective at his five-year mark in July 2013; Daniel Coté moved to accept the appointments; Glenn Taylor seconded the motion. All in favor. Two other DCs will interview before the Board in January as potential PRC members (Drs. Lorraine Ginter & Trevor Douglass).

9. Review / Approve Proposed Record Keeping courses

The four programs presented for approval include Drs. Tom Freedland's and J. Michael Burkes; the OCA's presentation with Kathy Mills-Chang, the online vendor ChiroCredit.com (with presenter Gregg Friedman DC), and Western States' (with David Corll DC). Doug Dick moved to accept all four CE programs to meet the Board's 2013 Record Keeping / Documentation CE requirement. Daniel Coté seconded the motion. All in favor. Christine Robinson, aye; Doug Dick, aye; Todd Bilby, aye; Glenn Taylor, aye; Daniel Coté, aye and Ann Goldeen, aye.

10. Staff Report

Future 2013 Board meetings – January and March in Salem; May's meeting in Astoria (May 23); July in Salem and September or November in Medford.

2. Board Best Practices and Executive Director's Performance review

Board members turned in their board self-assessments and also completed Dave's review with high marks.

3:325 PM ADJOURN to Executive Session

3:30 PM RECONVENE to Public Session

IN THE MATTERS OF (continued)

Case # 12-1037 Lief Choi DC

The Board proposed to issue a Cease and Desist letter to the doctor – Stop doing the videofluoroscopy DMX radiographic studies on his patients until further notice. Ann Goldeen moved to accept the board's determination; Christine Robinson seconded the motion. All in favor. Doug Dick, aye; Daniel Côté, aye; Ann Goldeen, aye; Glenn Taylor, aye; Todd Bilby, aye and Christine Robinson, aye.

3:35 PM ADJOURN