



Oregon

Theodore R. Kulongoski, Governor

Oregon Board of Chiropractic Examiners

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PUBLIC SESSION

ODOT Region 1 Headquarters, Room 337

123 NW Flanders St

Portland, OR 97209

November 20, 2008

Members Present

Minga Guerrero, DC President

Michael Vissers, DC Vice-President

Joyce McClure, DC Secretary

Michael Megehee, DC

Steve Koc, DC

Douglas Dick, Public Member.

Cookie Parker-Kent, Public Member – Excused

Staff Present

Dave McTeague, Executive Director

Kelly Edmundson, Administrative Assistant

Michael Summers, Investigator

Lori Lindley, Assistant Attorney General

Donna Dougan, Administrative Assistant

Others Present:

Huma Qureshi-Pierce, DC

CONVENE 9:15 AM

Dr. Koc read the Mission Statement

ADOPTION OF THE AGENDA – Adopted without change.

PUBLIC COMMENT

Dr Pierce appeared to observe how the Board functions. In addition, she is interested in the discussion about digitized plain film imaging.

DISCUSSION ITEMS

3. Policy Discussion: Digitized plain films (*moved this discussion up for the benefit of the public*)

The Board was asked how digitized plain film images are different than manual reads and why the cost of a digitized film is significantly more costly than a manual read. The Board posed these questions to Jeffrey Cronk, DC. Dr. Cronk went through a long discussion on how, “nobody could ever manually duplicate what a digitized x-ray does.” Cronk gets a plain film, and marks bony landmarks. Then he sends those through the digitized process; information is extrapolated from the markings. A Board-Certified Radiologist (DACBR) confirmed this process as Dr. Guerrero describes it. There are no pathology reads in these films. Her concern is if DCs are using digitized films *solely* as a diagnostic tool, they might be missing metabolic disease, cancer, all sorts of pathology problems. Cronk’s own statement is, “this is not the professional component of an x-ray.”

Dr. Pierce commented. She has sent patients (usually PIP) out for the digitized film to “NID”. She sends them solely to look at whether or not there is some form of the dementia(?) damage compromise. She is not having them sent to see if there are any pathologies. From her point of view, the purpose for digitized x-rays is for soft-tissue damage.

Dr. Guerrero stated that the insurance companies were asking if you can duplicate the same findings with a manual line and angle read. We did find, by interviewing other certified chiropractic radiologists, that they have done comparisons and found almost identical information. There are more questions to ask such as, “is it worth the cost?”

Dr. McClure also asked what code is being billed to the insurance company or patient. If they are billing to a code that suggests that it is identical to a pathology read x-ray then that may need some discussion as well (is someone getting what they are paying for).

Dr. Megehee asked what our role is in answering their questions? We contacted this company and found that no pathological read is included, that a qualified person is placing the markers, and that other companies may not hold to the same standard. It is the board’s responsibility to contact all these other companies. We’ve done our investigation showing that there are people doing this. As far as a code, the insurance companies need to deal with that themselves. Dr. Vissers agrees.

Dr. Cronk is claiming superiority in his advertisement (page 8 “nobody can do what I do.”) If it is within the Board’s purview, Dave will send a letter to Dr. Cronk about his claim of superiority.

The Board will also send a letter to Gordon Compton (SIU) and suggest he contact the American Chiropractic Board of Radiology. Tell him that we know some companies have a qualified person putting the markers on, and that all or some do not include a pathology report.

Dr. Guerrero will draft a BackTalk article stating, “If doctors are exclusively using digitized films they must take care of the pathology reads on their own.”

1. Public Rule Hearing: Proposed Amendments to Continuing Education Rule

Dr. Guerrero opened the hearing at 9:50 AM to consider amending OAR 811-015-0025 Continuing Education. The Board acknowledges all of the testimony received on this rule proposal.

Discussion: Dr. Megehee said that this is an issue with the Department of Transportation as well – should CE be presented in live format, video or by internet. If there is an assessment (a test) on the person attending the program, that seems to make the difference. He contacted the Federation of Chiropractic Licensing Board (FCLB); they sent him all of the states’ CE requirements. About one-third, of the states allow any kind of a presentation; another third will not allow ANY kind of video or website presentation. Also, Oregon does not require the most CE hours, and this board is the most lenient in its requirement.

Dr. McClure also researched adult learning styles. Factors that help participants get the most out of their education 1) engage the participant, 2) accountability: test at the end, 3) if the education could be applied to the participant’s life. Dr. Koc quoted Today’s Chiropractic Lifestyle (which quoted Donna Liewer from the FCLB) saying “*Staying connected with peers ... is a great way to stay informed about insurance procedures and changes, have a system of checks and balances. There is a tendency to rationalize poor choices when you are isolated. Being around colleagues helps you understand that...*” Dr. Koc recommends holding off on adopting the portion of the proposed rule which requires a defined number of hours to be completed live.

In conclusion, Joyce McClure moved to amend the CE rule language in subsection 4 as follows:

(4) The Board may require specific courses as part of a chiropractic physician's annual relicensure hours for an upcoming licensure period. Except as provided in sections (5), (6) and (7), the Board shall determine which courses shall be required by May of the year prior to the relicensure year in which the course will be required.

Steve Koc seconded the motion. All in favor. Guerrero, aye; Koc, aye; Megehee, aye; Vissers, aye; McClure, aye; and Dick, aye.

At this time the Board is NOT adopting the proposed change in subsection 8(h) regarding mandatory live education.

Continuing, Steve Koc moved to amend subsection 11 as follows:

(11) ~~Each year~~ At each renewal the OBCE will generate a random computer list of a minimum of 10% or up to 100% of renewing licensees, who will then have their CE records reviewed to ensure compliance with this rule. Licensees shall respond to this request within 30 days by supplying the OBCE with verification of their CE courses or activities as provided in section 10.

Joyce McClure seconded the motion. All in favor. Guerrero, aye; Koc, aye; Megehee, aye; Vissers, aye; McClure, aye; and Dick, aye.

Joyce McClure moved to delete subsection 16.

(16) This rule is effective beginning the 2002-2003 licensure year.

Minga Guerrero seconded the motion. All in favor. Guerrero, aye; Koc, aye; Megehee, aye; Vissers, aye; McClure, aye; and Dick, aye.

Joyce McClure moved to adopt the rules as so amended. Steve Koc seconded the motion. All in favor. Guerrero, aye; Koc, aye; Megehee, aye; Vissers, aye; McClure, aye; and Dick, aye.

2. Regional FCLB Meeting Report: Joyce McClure DC

Dr. McClure attended this district meeting in October 2008. She gave the board a few highlights: There was some discussion on veterinary chiropractic; most states allow treatment of animals with some degree of supervision by a licensed veterinarian. In Utah, the physical therapists are having a tough time with the medical association. Many are trying to buy up PT practices and keep control of them that way.

There was a lot of laudatory comments for Dr. Megehee and his work for the Department of Transportation and D.O.T. physicals. Practice related issues - there was a suggestion that pre-paid plans be held in escrow accounts by a third party, for the protection of the patient and because of general concern about how they fall apart in the end.

Electronic medical records are going to be required and Dr. McClure believes Oregon will be mandated to use them by 2014. Also, Medicare treatment plans must include long and short term goals. Dr. Megehee heard that Oregon is going to be audited by Medicare in 2009.

In the areas of communication and discipline, there were suggestions to utilize the media for *positive* press releases for issues such as, “The board takes a hard line against misleading advertising tactics.”

States are asking their sister boards to file disciplinary actions with the FCLB (HIPDB) as soon as possible to keep the database up to date. FCLB also encourages departing board members to think about signing on for other professional interests (Ethics and Boundaries committee). And in closing, many states are increasing the number of hours for initial CA certification.

4. Policy Discussion: Minor surgery requirements (follow-up from Sept.)

Dave emailed all of the doctors certified in minor surgery concerning the proposed continuing education changes (documenting a certain number of procedures performed in lieu of seminar hours). Dave drafted some rule language which cites that eight procedures may be performed in lieu of 8 hours CE. The board agrees to leave the reporting period at three years (this is the existing rule). Dr. Vissers proposes that it be 12 hours of CE every three years, or 12 observed or performed procedures plus, four hours live presentation.

Joyce McClure moved and Doug Dick seconded the motion to enter permanent rule making. All in favor. Koc, aye; Vissers, aye; Megehee, aye; McClure, aye; Guerrero, aye and Dick, aye.

5. Policy Discussion: Chiropractic Assistant terminology issues.

The Board decided to drop the requirement that “chiropractic assistant” be spelled out on all communications, saying the designation “CA” is acceptable. The amended policy reads:

Chiropractic Assistant terminology

The use of the terms for chiropractic assistants, “massage therapist” and “therapist” are misleading and should not be used, as per Oregon Administrative Rule 811-015-0045. The rule was recently changed so that “Certified” has now been dropped and we are now referring to these licensees simply as “Chiropractic Assistants.” The designation “CA” is also acceptable. (11/20/2008)

6. Policy Discussions: Reflexology; Any Trained Person may ...; Iontophoresis & Phonophoresis

a) Frank Card, DC asked the Board if his wife (currently an unlicensed CA; her CA certificate expired July 31, 2008) could perform reflexology on her friends (his patients) in his clinic. Frank Card is dually licensed as a DC/Naturopath. The Board of Naturopathic allows this practice.

The OBCE’s response is, under Dr. Card’s *chiropractic* license he has no authority to allow this unlicensed treatment of his chiropractic patients in his clinic. This may be allowed under Dr. Card’s naturopathic license for his naturopathic patients. Remind Dr. Card in a letter to chart under which license these services are being provided. And, *Only IF* Mrs. Card is a certified CA, and Dr. Card is on the premise, may she perform reflexology on his chiropractic patients, under his direct supervision. As a dual licensed DC ND, he should chart under what license his services are being provided. If he does not indicate in his charts under which license services are provided, then it’s assumed he is practicing under both licenses and the OBCE’s rules apply.

b) In another matter regarding chiropractic assistants, Dr. Heresco asked the Board to clarify whether “any trained person” may actually *perform*, or only record, “initial patient intake history, which includes recording height, weight, blood pressure, temperature and pulse rate.”

Dr. Megehee added that half of the truck driver's exam could be done by any trained person; else, any licensee would be tied up for a long time performing them. Dr. Megehee declared a potential conflict of interest. Minga Guerrero moved to accept the proposed policy; Steve Koc seconded the motion. All in favor. Koc, aye; Vissers, aye; Megehee, aye; McClure, aye; Guerrero, aye and Dick, aye. The policy now reads,

ANY TRAINED PERSON (including Certified CAs) may perform the following

Clarify initial patient intake history, which includes recording or performing height, weight, blood pressure, temperature, and pulse rate. (11/20/2008)

c) **Iontophoresis** (using direct current) and **phonophoresis** (using ultrasound). The question is, "Can a CA perform iontophoresis?" This is a physiotherapy, and therefore, the Board adopted the following policy as an addition to the CA section of the Policy and Practice Questions Guide

Iontophoresis and phonophoresis. Chiropractic assistants may perform iontophoresis or phonophoresis under the doctor's supervision as a form of physiotherapy. (11/20/2008)

7. Policy Discussion: Oxygen concentration

Dr. Jeff Hartwell wants to buy equipment that concentrates oxygen (not to medical prescription levels), which is covered by our existing policy. Dr. Steve Koc claimed a potential conflict of interest. Michael Vissers moved to accept the policy; Doug Dick seconded the motion. All in favor. Steve Koc, aye; Vissers, aye; Megehee, aye; McClure, aye; Guerrero, aye and Dick, aye. The new policy reads

Oxygen Concentration The Oregon Board of Pharmacy considers USP (medical) Oxygen (100%) a prescription drug. However oxygen concentrated at a lower percentage (90 to 95%) does not require a prescription. With that understanding, the OBCE does not prohibit chiropractic physicians from concentrating oxygen or using devices which produce concentrated oxygen. However, it would be inaccurate for anyone to represent that the Board has "approved" the use of oxygen concentration. Similar precautions as indicated for emergency medical oxygen must be observed. (11/20/2008)

8. Ethics & Jurisprudence Exam update

Dave McTeague asked board members if this project can be moved from the January 2009 meeting to the March 2009 meeting; they agreed.

Policy Discussion: Dr. Vissers asked if board members will be allowed CE credit for their involvement in the exam process. Dr. Guerrero pointed out that we need to make a policy allowing credit for some of the Board work that is done. She will draft a policy to allow eight hours CE (similar to what OBCE subcommittees are allowed). This matter will be discussed in the January 2009 meeting. Add to the proposed policy that "each board member loses \$5 to \$15,000 annually depending on the amount of time spent away from their practice."

9. Key Performance Measures Update

We are trying to add two "common" (between the health boards) performance measures. We also proposed to drop two older measures – one, on the mentoring/rehabilitation plans because we have such a small universe, and two, we are not working on the Educational Manual any more, so it makes sense to drop that. Updating key performance measures is part of the budgeting process for 2009.

10. Board Best Practices Self-Assessment Performance Measure

Dr. Guerrero requested that all board members complete their (blue sheet) Best Practices Self-Assessment forms today so Dave can compile the information in a timely manner. (*Members did*)

11. Staff Report (financial report)

Dave provided the board members with a number of financial reports, including revenue and expenses, our current budget reports, and a spreadsheet showing our current financial situation. Dave will be reporting to the board soon on the different proposed legislation that we will face in the next legislature. One new proposal may pull us in under the impaired physician program; the Board of Medical Examiners, Dentists, and Pharmacists have similar programs. The proposal to increase the number of public members to professional members is still active. The Oregon State Bar is still pursuing its legislative concept to take away final order authority from the health boards and give it to the administrative law judges. The OSB also wants to remove the boards' cost recovery provisions.

Dave will be asking members to contact their own legislators. He has also been meeting with other health board directors; they have been very informative and productive. He has also tried to keep in contact with the chiropractic association.

CORRESPONDENCE

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

There are a number of factions filing lawsuits against ACN for cutting insurance claims and denying treatment plans without reason. Dr. Nowack submitted a letter to the OBCE asking it to "join the bandwagon." Doug Dick thinks a letter will let American Chiropractic Network know that we are aware of their tactics. After discussion, Drs. Guerrero and McClure will draft a letter to the Department of Insurance and Finance stating that we have a concern that this insurance company is operating deceptively. We can copy the letter to ACN.

2. Debbie Ramsey, Executive Director of CCE Australasia, re: accepting their DC applicants

Dr. Guerrero proposed tabling this issue. This has to do with international chiropractic accreditation. She spoke to both Dr. Joe Brimhall (WSCC President) and Dr. Kathleen Galligan (CCE) and there are some transitional concerns that could affect our ability to make a decision on whether to license people coming into the USA. Standards have not yet been well-regulated, and there is not a *world-wide* consensus on how best to educate chiropractors.

Dave referred to the Oregon Administrative Rule which read, "The purpose of the board is to approve only those schools teaching the schedule of minimum educational requirements as defined by the Council on Chiropractic Education." Looking at Oregon Revised Statute 684.040(d), it states that the application must be accompanied by "A diploma and transcript ... from a school accredited by the Council on Chiropractic Education."

The board agreed that until the Australasia CCE changes something we are bound to our statute.

12:40 PM ADJOURN to Executive Session

3:20 PM RECONVENED to Public Session for In the matters of

IN THE MATTER OF

As a result of the October 2008 Continuing Education audit the Board took action against the following seven licensees:

John Donovan, DC - The Board proposed a fine of \$850 (\$250 + [\$50 x 12 hours]) for failure to complete continuing education as indicated on his CE Renewal Notice & Affidavit. Mike Megehee moved to accept the board's determination; Minga Guerrero seconded the motion. All in favor. McClure, aye; Megehee, aye; Koc, aye; Vissers, aye; Dick, aye; and Guerrero, aye.

Jerry Evans, DC - The Board proposed a fine of \$650 (\$250 + [\$50 x 8 hours]) for failure to complete CE by his renewal date. Michael Vissers moved to accept the determination; Steve Koc seconded the motion. All in favor. McClure, aye; Megehee, aye; Koc, aye; Vissers, aye; Dick, aye; and Guerrero, aye.

Licensee #3 The Board proposed a fine of \$650 (\$250 + [\$50 x 8 hours]) again for not completing CE by his renewal date. Michael Vissers moved to accept the proposal; Steve Koc seconded the motion. McClure, aye; Megehee, aye; Koc, aye; Vissers, aye; Dick, aye. Minga Guerrero is recused. (*Licensee's name is now withheld as he provided additional information January 29, 2009 which shows he DID meet the CE requirement; the Board will withdraw this action.*)

Lee Samler Lloyd, DC - The Board proposed a fine of \$650 (\$250 + [\$50 x 8 hours]) for incomplete CE as claimed on her Renewal Notice & Affidavit. Mike Megehee moved to accept the Board's determination; Michael Vissers seconded the motion. All in favor McClure, aye; Megehee, aye; Koc, aye; Vissers, aye; Dick, aye; and Guerrero, aye. (*Final Default Order was issued on February 18, 2009.*)

Larry Fleetwood, DC - For failure to respond (cooperate) to the Board's Audit Request, the Board proposed to fine the licensee \$2,000 (\$750 for failure to cooperate, \$250 for a false Affidavit, and \$50 per hour for 20 incomplete hours). Steven Koc moved to accept the Board's determination; Doug Dick seconded the motion. All in favor. McClure, aye; Megehee, aye; Koc, aye; Vissers, aye; Dick, aye; and Guerrero, aye. (*Final Default Order was issued on January 6, 2009.*)

Deborah Hildebrandt, DC - For failure to respond (cooperate) to the Board's Audit Request, the Board proposed to fine the licensee \$2,000 (\$750 for failure to cooperate, \$250 for a false Affidavit, and \$50 per hour for 20 incomplete hours). Steve Koc moved to accept the Board's determination; Doug Dick seconded the motion. All in favor. McClure, aye; Megehee, aye; Koc, aye; Vissers, aye; Dick, aye; and Guerrero, aye. (*Stipulated Final Order issued on January 23, 2009, Licensee fined \$250 and status changed to Inactive.*)

Theresa McDermott, DC - For failure to respond (cooperate) to the Board's Audit Request, the Board proposed to fine the licensee \$2,000 (\$750 for failure to cooperate, \$250 for a false Affidavit, and \$50 per hour for 20 incomplete hours). Steve Koc moved to accept the Board's determination; Doug Dick seconded the motion. All in favor. McClure, aye; Megehee, aye; Koc, aye; Vissers, aye; Dick, aye; and Guerrero, aye. (*Licensee subsequently provided information demonstrating compliance and this Notice was withdrawn.*)

Case # 08-1011 The Board proposed insufficient evidence to find a violation, however, a letter of concern will be sent to the licensee. Steve Koc moved to accept the determination; Mike Megehee seconded the motion. All in favor. McClure, aye; Megehee, aye; Koc, aye; Vissers, aye; Dick, aye; and Guerrero, aye.

Case # 08-3010 The Board proposed insufficient evidence to find a violation. Joyce McClure moved to accept the determination; Steve Koc seconded the motion. All in favor. Megehee, aye; Koc, aye; Vissers, aye; Dick, aye; McClure, aye; and Guerrero, aye.

Case # 08-1023 The Board found no statutory violation. Mike Megehee moved to accept the determination; Doug Dick seconded the motion. All in favor. McClure, aye; Megehee, aye; Koc, aye; Vissers, aye; Dick, aye; and Guerrero, aye.

Case # 08-1027 The Board proposed insufficient evidence to find a violation, with a letter to be sent. Michael Vissers moved to accept the determination; Mike Megehee seconded the motion. All in favor. Megehee, aye; Koc, aye; Vissers, aye; Dick, aye; McClure, aye; and Guerrero, aye.

Case # 07-2006 Tuan Tran

The Board proposed a \$226,500 civil penalty for unlicensed practice, and other violations. Doug Dick moved to accept the Board's determination; Steve Koc seconded the motion. All in favor. McClure, aye; Megehee, aye; Koc, aye; Vissers, aye; Dick, aye; and Guerrero, aye.

In addition the Board moved for injunctive relief (restraining order, temporary, and then permanent injunctions). Joyce McClure moved to accept the proposal; Michael Vissers seconded the motion. All in favor. McClure, aye; Megehee, aye; Koc, aye; Vissers, aye; Dick, aye; and Guerrero, aye.

Case # 08-3007 L. Fleetwood

The Board proposed an indefinite suspension for failure to cooperate. Doug Dick moved to accept the Board's determination; Minga Guerrero seconded the motion. All in favor. McClure, aye; Megehee, aye; Koc, aye; Vissers, aye; Dick, aye; and Guerrero, aye.

Case # 08-5018 The Board determined case closed with a letter of concern to be sent to the licensee. Minga Guerrero moved to accept the determination; Mike Megehee seconded the motion. All in favor. McClure, aye; Megehee, aye; Koc, aye; Vissers, aye; Dick, aye; and Guerrero, aye. In relation to this matter, the board has adopted some policy language about particular therapies.

Case # 08-5019 The Board determined case closed with a letter of concern. Joyce McClure moved to accept the Board's determination; Michael Vissers seconded the motion. All in favor. Megehee, aye; Koc, aye; Vissers, aye; Dick, aye; McClure, aye; and Guerrero, aye. The Board also determined to open two new complaints for violations rising out of this case.

Case # 08-3011 The Board determined case closed upon a showing that the sign was changed within 30 days. Michael Vissers moved to accept the determination; Joyce McClure seconded the motion. All in favor. Megehee, aye; Koc, aye; Vissers, aye; Dick, aye; McClure, aye; and Guerrero, aye.

Appointments: Two peer review members are up for re-appointment. Michael Vissers moved to reappoint Drs. David Corll and Todd Bilby to the Peer Review Committee. Joyce McClure seconded the motion. All in favor. McClure, aye; Megehee, aye; Koc, aye; Vissers, aye; Dick, aye; and Guerrero, aye.

ADJOURN 3:35 PM