



# Oregon

Theodore R. Kulongoski, Governor

## Oregon Board of Chiropractic Examiners

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### Public Session Minutes

Morrow Crane Building  
Upstairs Large Conference Room  
3218 Pringle Road SE  
Salem, Oregon

September 18, 2008

#### Members Present

Minga Guerrero, DC President

Michael Vissers, DC Vice-President

Joyce McClure, DC Secretary

Michael Megehee, DC (teleconferenced)

Steve Koc, DC

Cookie Parker-Kent, (Excused)

Douglas Dick, Public Member

#### Staff Present

Dave McTeague, Executive Director

Kelly Edmundson, Administrative Assistant

Michael Summers, Investigator

Lori Lindley, Assistant AG

#### **Others Present:**

Don Ferrante, DC, and Jan Ferrante

**CONVENE 1:10 PM**

**ADOPTION OF THE AGENDA** The agenda was adopted without change.

#### IN THE MATTER OF

Regarding **Emotional Freedom Technique (EFT)** – The Board proposed to deny this program for continuing education credit, and will place it on the Board’s “not approved for Continuing Education” list. Michael Vissers moved to accept the determination; Joyce McClure seconded the motion. Cookie Parker-Kent and Mike Megehee absent for the vote. Steve Koc, aye; Michael Vissers, aye; Joyce McClure, aye, Douglas Dick, aye, and Minga Guerrero, aye. Mike Megehee away for the vote.

#### **Reciprocity applicant**

The Board determined that the applicant has been out of practice for greater than five years, and must take the NBCE’s SPEC exam to complete his application. Vissers moved to accept the Board’s determination; Steve Koc seconded the motion. Joyce McClure, aye, Douglas Dick, aye, Minga Guerrero, aye; Steve Koc, aye; Mike Megehee, aye; and Michael Vissers, aye.

#### **CCAs may Not be termed “therapists” as “massage therapists”**

The Board adopted a policy statement that Chiropractic Assistants may not term themselves therapists or massage therapists. The Board believes it is misleading to do so. This new policy will be placed in the Policy & Practice Question Guide and posted on the OBCE website. Joyce McClure moved to accept the Board’s determination; Michael Vissers seconded the motion. Joyce McClure, aye, Douglas Dick, aye, Minga Guerrero, aye; Steve Koc, aye; Mike Megehee, aye; and Michael Vissers, aye. Dave will also communicate this policy to the Board of Massage Therapists.

**Case #08-1015** The Board determined no statutory violation in this matter. Michael Megehee was recused. Steve Koc moved to accept the Board's determination; Doug Dick seconded the motion. All in favor. Joyce McClure, aye; Douglas Dick, aye; Minga Guerrero, aye; Steve Koc, aye; Mike Megehee, aye; and Michael Vissers, aye.

**Case #08-1017** The Board determined case closed with a Letter of Concern. Joyce McClure moved to accept the Board's determination; Doug Dick seconded the motion. All in favor. Joyce McClure, aye; Douglas Dick, aye; Minga Guerrero, aye; Steve Koc, aye; Mike Megehee, aye; and Michael Vissers, aye.

**Case #08-1018** The Board determined no statutory violation. Minga Guerrero moved to accept the Board's determination; Steve Koc seconded the motion. All in favor. Joyce McClure, aye; Douglas Dick, aye; Minga Guerrero, aye; Steve Koc, aye; Mike Megehee, aye; and Michael Vissers, aye.

**Case #08-1020** The Board determined insufficient evidence to find a violation with a letter of concern. Mike Megehee moved to accept the Board's determination; Michael Vissers seconded the motion. All in favor. Joyce McClure, aye; Douglas Dick, aye; Minga Guerrero, aye; Steve Koc, aye; Mike Megehee, aye; and Michael Vissers, aye.

**Case #07-2006 Tuan Anh Tran**  
The Board authorized a Cease and Desist letter for operation of a chiropractic clinic with less than majority ownership by a licensed chiropractor. In addition the Board will send a similar Cease and Desist letter to the employee chiropractor telling him he should not be working for an illegal chiropractic corporation any further. Douglas Dick moved to accept the Board's determination; Joyce McClure seconded. Joyce McClure, aye; Douglas Dick, aye; Minga Guerrero, aye; Steve Koc, aye; Mike Megehee, aye; and Michael Vissers, aye.

**Case #07-3003** The Board determined case closed. Steve Koc moved to accept the determination; Michael Vissers seconded. All in favor. Joyce McClure, aye; Douglas Dick, aye; Minga Guerrero, aye; Steve Koc, aye; Mike Megehee, aye; and Michael Vissers, aye.

**Case #08-5018 Richard Finley DC**  
Case closed pending the doctor's acceptance of a Consent Agreement in which he agrees to have an observer in the clinic one time a month for a period of time, and a follow-up appointment with the psychologist within a six to nine month period. (The doctor agreed to the Consent Agreement. This is Not a disciplinary action, but is a public document.) Vissers moved to accept the determination; Joyce McClure seconded the motion. All in favor. Douglas Dick, aye; Minga Guerrero, aye; Joyce McClure, aye; Steve Koc, aye; Mike Megehee, aye; and Michael Vissers, aye.

**Case #08-3003** The Board determined insufficient evidence to find a violation with a letter of concern. Mike Megehee moved to accept the determination; Joyce McClure seconded the motion. Douglas Dick, aye; Minga Guerrero, aye; Steve Koc, aye; Mike Megehee, aye; and Joyce McClure, aye. Michael Vissers opposed.

**Case #08-3004** The Board determined no statutory violation. Michael Vissers moved to accept the determination; Steve Koc seconded. All in favor. Joyce McClure, aye; Douglas Dick, aye; Minga Guerrero, aye; Steve Koc, aye; Mike Megehee, aye; and Michael Vissers, aye.

**Case #08-3006** The Board determined no statutory violation with a letter to be sent to the complainant. Minga Guerrero moved to accept the determination; Doug Dick seconded. All in favor. Joyce McClure, aye; Douglas Dick, aye; Minga Guerrero, aye; Steve Koc, aye; Mike Megehee, aye; and Michael Vissers, aye.

The Board also discussed convening the DCs certified in minor surgery for a policy discussion as to whether the training and certification requirements are adequate.

**Case #08-3008** The Board determined case closed. Michael Vissers moved to accept the determination; Steve Koc seconded the motion. All in favor. Joyce McClure, aye; Douglas Dick, aye; Minga Guerrero, aye; Steve Koc, aye; Mike Megehee, aye; and Michael Vissers, aye.

**Case #08-1014** The Board determined case closed with a Letter of concern. Joyce McClure moved to accept the determination; Minga Guerrero seconded the motion. Joyce McClure, aye; Douglas Dick, aye; Minga Guerrero, aye; Steve Koc, aye; Mike Megehee, aye; and Michael Vissers, aye.

**Case #08-1005 Mark Schroering DC**

The Board proposed a Notice of Disciplinary action for illegible chart notes, billing and coding irregularities and unlicensed practice of therapy in the office. The proposed discipline is random file reviews over a 2 year period to determine compliance; 12 additional CE hours in billing, coding and chart noting to be completed in a board-approved live presentation; and a \$500 civil penalty. Minga Guerrero moved to accept the determination; Steve Koc seconded the motion. All in favor. Douglas Dick, aye; Joyce McClure, aye; Minga Guerrero, aye; Steve Koc, aye; Mike Megehee, aye; and Michael Vissers, aye.

**PUBLIC COMMENTS**

Dr. Don Ferrante and Jan Ferrante appeared to discuss continuing education. See Discussion #6 below.

**DISCUSSION ITEMS**

**1. Reconsideration of Proposed Administrative Rule for the purpose of making technical amendments: Certified Chiropractic Assistants rule**

Since the Board last adopted the rule, there was some discussion about a change to “licensure” or “license.” The Board agreed to keep the terminology “certified” or “certificate.” Dr. McClure suggested a one-word change in 16(a) which clarifies “current patient” as it was implied but not explicitly stated. These are technical amendments only.

Dr. McClure also proposed changing the term from “Certified Chiropractic Assistant” to simply “Chiropractic Assistant.” Joyce McClure moved to reconsider the Board’s last vote to adopt the amended rule (in July); Minga Guerrero seconded the motion. All in favor. Douglas Dick, aye; Joyce McClure, aye; Minga Guerrero, aye; Steve Koc, aye; Mike Megehee, aye; and Michael Vissers, aye.

In a second motion, Dr. Guerrero moved to adopt the proposed rule with technical amendments as discussed above; Douglas Dick seconded the motion. All in favor. Joyce McClure, aye; Douglas Dick, aye; Minga Guerrero, aye; Steve Koc, aye; Mike Megehee, aye; and Michael Vissers, aye.

**2. Policy Discussion: When to invite licensees or complainants for executive session interview with the Board? (Although the board initially voted to withdraw this discussion, the discussion continued anyway.)**

The Board should consider if the licensee or complainant has had the opportunity to speak to the Peer Review Committee through an interview process. Once Board deliberations have begun, the licensee or complainant may only return to speak in person with the Board at the Board’s request.

Dr. Guerrero added that we notify the complainant and doctor that “During the fact finding process this is your opportunity to share your side. Once the fact finding is closed and the Board begins deliberations, there will be no more input.” Dr. Megehee added that the patient be given the same opportunity to speak if/when the licensee has asked for time before the board.

In conclusion, the Board agrees to notify the complainant or licensee, that once the board begins deliberations, there is no further opportunity to “discuss the matter before the Board.” Dave McTeague suggested that be an informal policy.

### **3. Policy Discussion: Digitized plain film X-rays**

Dr. Guerrero requests staff to contact the company (in Wisconsin) and ask these questions:

- Who marks the boney landmarks? What is their degree?
- Who sets the fee schedule? (Please send one.)
- Do you have a pathology read with your lines and angles, or is there any pathology read in the report?

The Board will continue this discussion once answers are received.

### **4. Ethics & Jurisprudence Exam update**

Dave reported to the Board on his progress creating new boundary and advertising questions; and he would like the board’s feedback. It is challenging to develop good “stems” (a statement of a violation), and good distracters.

Doug Dick was under the impression that any time the board uses a test for licensure, you need to follow the Federal EEOC (Equal Employment Opportunity Commission) regulations. Dave verified that the Board will have to evaluate each question for fact and comprehension. As this is an open-book examination, few fail to pass this exam the first time. Dave will continue drafting more questions.

**2:30 PM** Dr. Megehee (teleconferenced) disconnected the call.

### **5. Policy Issue: Review/update 2001 Records Release Policy (relates to IMEs)**

This discussion came about after a conversation with an insurance company attorney about IME doctors and their notes. When the OBCE requests records from an independent medical examiner, what exactly are they required to save and be able to reproduce? Dr. Guerrero feels that they don’t have to save records from other doctors; they must save the reports they generate, and the exams they do.

Discussion. Should they have to save their hand-written notes? Dave reminded the Board of its current policy which reads, “If those parts exist, then they must be part of the record.” After much discussion, the Board determined to update their current policy by adding the following:

*Independent Medical examiners are not required to keep records from other providers*

### **6. Policy Discussion: Continuing Education**

(Discussed first today) Dr. McClure opened the discussion with the mention that nationally there is more interest in “continuing competence” versus “continuing education.” Since, Oregon has a very broad scope of practice we want to make sure that we support that. One idea has been to require more CEUs live (not video or online), in order to foster a more interactive process and opportunity for course presenters to address the competence factor. Oregon DCs continue to demonstrate weakness in the coding and charting arena. Dr. Ferrante spoke on behalf of the Chiropractic Association of Oregon. CAO recently offered a Medicare seminar with a turnout of about 70 chiropractors. It was a great seminar, but the low turnout was

a concern. Of the 1400 or so licensed doctors, where are they getting their knowledge about Medicare? The workshop speaker gave statistics regarding all boards that have compliance responsibilities (in insurance and Medicare), stating chiropractic is last. Dr. Ferrante feels that the lack of unity in the profession is partly to blame. Dr. Ferrante is hopeful that there will be ONE association in the near future. The leadership of both (association) boards have listened to all the concerns about each other to work out this unity.

Dr. Ferrante went on to say that both associations are interested in enhancing continuing education requirements. Both associations are concerned that some licensees do the minimum (or no) CE to get by, and that the current "audit" system allows for this. He said (the association leadership) know that coding and billing is an issue in this profession, chart noting is an issue, and Medicare is an issue, because those that are doing the billing aren't paying attention to detail.

In conclusion, Dr. Ferrante (he says on behalf of CAO/ODOC) requests that the Board

- Mandate completion of eight hours of coding and billing CE,
- That 8-10 of the 20 annual CE hours be taken "live", OR consider an increase to the total number of hours required annually,
- Require ALL proof of CE be sent in, but continue with the ten percent audited. By sending in their CE licensees know they are accountable. (Dr. Ferrante, suggested that CAO/ODOC are willing to provide staff to assist with the audit of the CE submissions).

We feel that this rule (on CE requirements) needs to be looked at again. It may be that multiple workshops offered across the state (e.g. on adequate chart noting) would work.

Dave McTeague noted that the Board could make a proposal to amend the CE rule and hold a hearing in November 2008.

Dr. McClure proposed that January 1, 2009, that licensees be required to have 24 hours, 50% of which would be required to be live. Mike Megehee asked for discussion. He is in favor of live sessions. Each year we should identify that subject that we need our profession to improve on. Make *that* seminar a live session. (Motion died for lack of a second.)

Dr. Vissers suggested that we need to have a good number of workshops across the state, IF the subject matter must be completed live.

After discussion, Mike Megehee proposed to change OAR811-015-0025 (4) by deleting the reference to the month of May ("...the board shall determine which courses shall be required by May of each year prior to the relicensure year in which the course will be required," and to require at least 50% of the annual CE credit must be completed "live and in-person." Michael Vissers seconded the motion. All in favor. Cookie Parker-Kent is excused. This will be public noticed and open for comment.

## **7. Policy Discussion: Informed Consent Forms**

*There was no discussion on this item.*

## **8. Committee appointments**

Dr. Joyce McClure nominated Dr. Marcella Box as a new Rules Advisory Committee member. Michael Vissers moved to accept the nomination; and Dr. Koc seconded the motion. All in favor. Joyce McClure, aye; Doug Dick, aye; Minga Guerrero, aye; Steve Koc, aye; Michael Vissers, aye.

Secondly, Dr. Vissers moved to appoint Drs. Jonathan Hansel and Daniel DeLapp as new members to the Minor Surgery Committee. Dr. McClure seconded that motion. All in favor. Joyce McClure, aye; Douglas Dick, aye; Minga Guerrero, aye; Steve Koc, aye; and Michael Vissers, aye.

- 9. Staff Report** Dr. McClure asked about the status of legislation proposed to add one public member and remove one professional member on the OBCE. The Board is opposed to this change. Dave suggested that the board members write to their legislators about this

### **CORRESPONDENCE**

**1. Dennis Nowack DC, re: American Chiropractic Network**

Digitized films: This issue is carried forward to the next meeting. Drs. Guerrero and McClure plan to bring it up for discussion at the October 2nd, Federation of Chiropractic Licensing Board (FCLB) regional meeting in Lake Tahoe, Nevada.

**2. Gregg Helms DC, re: Minor Surgery CE**

Dr. Guerrero was asked to discuss the need for continuing education for those certified in minor surgery. There are not enough (any) classes available. Dr. Lester Lamm wrote that, “Western States Chiropractic College does not have enough money to continue live presentations for minor surgery CE. The cost-to-attendees ratio is too high. Neither can WSCC provide video classes because they do not have the “sterile camera procedure” in the operating area. In addition, Oregon Health Sciences University does not offer a single minor surgery class (something specific to the superficial fascia). Dr. Lamm suggested that the OBCE assign a “number threshold” (i.e. 10 every two years) of procedures to maintain the minor surgery certification. Dr. Lamm feels that “ten” is more than adequate. Documentation of such procedures could be the doctor’s schedule and the patient’s bill.

Dr. Guerrero also called Dr. Helms who also suggested that four procedures every two years might be adequate.

The Board proposed to allow the completion of eight (8) procedures every two years to meet the minor surgery certification CE requirement. Anyone performing these procedures should submit a copy of the patient schedule and/or patient billing with patient name redacted. This proposal will be submitted to the Minor Surgery Committee and those certified for their input.

**Advertising Question** – Briefly, Dave McTeague asked the Board if there is anything wrong with calling a clinic “Advanced Chiropractic”? (*There are approximately eight other clinics with this name...*) The Board does not feel it is a violation of the Board’s advertising rules.

**MEETING ADJOURN 3:15 PM**