



# Oregon

Kate Brown, Governor

## Board of Chiropractic Examiners

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### **PUBLIC SESSION MINUTES**

Sunriver Resort, Fremont Room

17600 Center Dr

Sunriver, OR 97707

**September 17, 2015**

#### **Members Present**

Daniel Côté DC, President

Glenn Taylor, Vice-President

Lisa Kouzes DC, Secretary

Jason Young DC

Ann Goldeen DC

Ron Romanick DC

Amber Reed JD, *Excused*

#### **Staff Present**

Cassandra Skinner JD, Executive Director

Kelly Beringer, Admin Assistant

Donna Dougan, Admin Assistant

George Finch, Investigator

Frank Prideaux DC, Health Investigator

Lori Lindley, Assistant Attorney General (AAG)

#### **Other Attendees:**

Drs. Joseph Pfeifer (UWS), Beverly Harger (UWS), David Otto, Julie Martin, and Sharron Fuchs; Frank Moscato AAL, and Joseph Dietert (Allstate)

**9:00 AM** Meet and Greet with area Doctors of Chiropractic - The Board thanked those Doctors of Chiropractic who came out to meet us and share their thoughts and opinions.

#### **ADOPTION OF THE AGENDA**

Dr. Kouzes moved to accept the agenda as presented. Dr. Goldeen seconded the motion. All in favor. Motion passed unanimously.

#### **10:00 AM CONVENE Public Session**

#### **DISCUSSION ITEMS**

##### **1. Policy Discussion: UWS and diagnostic ultrasound**

UWS asked for further review and clarification. Frank Moscato, representing University of Western States, spoke to the Board in support of diagnostic ultrasound, real-time imaging – an inexpensive and a very useful tool in the hands of a trained practitioner. The school is creating a certification for *diagnostic ultrasound* requiring 100s of hours of hands-on training in addition to lecture. Dr. Joe Pfeifer added that this is an imaging study; it is ideal to corroborate with your physical findings. Dr. Côté asked how much training would be required for a “regular” DC. Dr. Pfeifer acknowledged that training is required, hands-on training, but didn’t respond with an amount of hours. Dr. Pfeifer added that there are a number of organizations that certify people to do diagnostic ultrasound. Dr. Harger added that UWS is training for *musculoskeletal ultrasound*. Dr. Romanick asked if graduating students will have this training when they graduate or will additional training be required. Dr. Harger responded that UWS is offering about 100 hours.



Dr. Young asked whether UWS feels that a CA would be qualified to use the diagnostic ultrasound. Dr. Harger is not comfortable with that possibility, and Dr. Pfeifer added that a CA can be trained to operate the equipment, but the real question is whether a CA is trained and competent to perform and interpret the study. Dr. Pfeifer again stated that a sufficiently trained person could take the study, but he shared Dr. Harger's concern about CAs having an appropriate amount of training. Dr. Côté agreed that the physician should be taking the studies.

Dr. Frank Prideaux added that he was recently asked if this is the same program as an associate program for diagnostic ultrasound at a community college. Dr. Harger: "We are not making that statement." Dr. Pfeifer: "The two questions are: is it within the scope of practice? and what is the appropriate level of training to do this competently?"

Two organizations AIUM and ARDMS offer certification and testing programs for diagnostic ultrasound. UWS is only talking about *musculoskeletal diagnostic ultrasound*, not soft tissue.

Dr. Côté asked if UWS has anything in the curriculum about extracorporeal shockwave therapy (ESWT). No.

Drs. Pfeifer and Harger continued to describe the process, procedure; they are still in the building stages of the certification program. Dr. Pfeifer verified that graduating students will still need additional training before they perform this modality, including hands-on experiences.

**Appropriately trained Doctors of Chiropractic may provide musculoskeletal diagnostic ultrasound.**

Dr. Côté read the following questions about diagnostic ultrasound for the Board to provide guidance on:

**Q1. Does the Board consider extracorporeal shockwave therapy (ESWT) "therapeutic ultrasound" and is it within our scope of practice?**

**Discussion:** ESWT is not taught within the school; they could also make an ETSDP application. Dr. Pfeifer replied that yes, it is therapeutic ultrasound, and yes, diagnostic ultrasound is within the scope, but ESWT is not taught at the school. Mr. Moscato added that ESWT is taught at other schools. AAG Lindley added that if that is so, it would be considered within the scope.

**Motion 1.** Dr. Kouzes moved that we not make a specific determination on ESWT, but that an interested person submit an application to the ETSDP committee for review and consideration. Dr. Romanick seconded the motion.

**Vote on Motion 1:** All in favor. Motion passed.

**Q2. Can any DC licensee in the State of Oregon perform diagnostic ultrasound without additional training?**

**Discussion:** It can be performed by any licensed DC that demonstrates proficiency and proper qualifications.

**Motion 2:** Dr. Côté moved; Dr. Young seconded.

**Vote on Motion 2:** All in favor. Motion passed.

**Q3. *If a licensed DC in Oregon obtains training in diagnostic ultrasound at a community college and obtains an associate degree in (Dx ultrasound), can they advertise and market to other DCs?***

**Discussion:** Dr. Côté believes that the licensee must explain what type of training they have from which curriculum, and from which school; they would need to demonstrate proficiency.

**Motion 3:** Dr. Young made a motion that all inquiries about specific uses of diagnostic ultrasound will be addressed on a case by case basis.

**Vote on Motion 3:** No second. Motion dies.

**11:15 AM** Public attendees left meeting; Break.

## **2. Policy Discussion: Roller tables and traction**

**Q. *Is roller table segmental mobilization considered clinical traction by the Board?***

**Discussion:** Dr. Fuchs commented there seems to be a concern whether segmental mobilization by a roller table is considered traction. She has seen a segmental mobilization table that provides traction but also it provides mobilization; it can be a combined modality. Dr. Côté asked Dr. Fuchs how she defines traction, and she replied, "Any form of distraction of the joint."

Executive Director Skinner directed the Board to additional comments and information in their board packets.

Steve Dietert also commented that it matters what device is being used – there are a number of these rolling tables. The main debate is whether this is really traction or not. If someone has an injury that requires traction, there are other tools that can be used. What is really happening with providers using these tables and what is the purpose? People are looking for the proper code. Dr. Côté added that we do not get into the coding aspect.

Dr. Young looked up a definition of traction, and read the CPT definition which the ACA references. Mechanical traction is defined:

“...the force used to create a degree of tension of soft tissues and/or to allow for separation between joint surfaces. The degree of traction is controlled through the amount of force (pounds) allowed, duration (time), and angle of pull (degrees) using mechanical means.”

Staff will draft a letter referring the licensees to the new policy statement, incorporating the ACA definition.

## **3. Fingerprint background checks for Chiropractic Assistants**

Presently, staff only accesses the Oregon public record for “background checks,” and when possible other states’ public records when CA applicants indicate they have out of state licensure. This process is incomplete as it does not cover a national check. Dr. Côté directed staff to perform a cost analysis to

determine whether we need to increase the chiropractic assistant fees, or do current fees cover the additional background check.

AAG Lindley verified that we would need to amend two rules - the CA rule 811-010-0110 to add background checks, and the background check rule 811-010-0084 Fitness Determinations for Licensure; State and Nationwide Criminal Background Checks to add chiropractic assistants; the rule currently only addresses Doctors of Chiropractic.

#### **4. Customer Service Survey responses**

A survey was delivered electronically to all DC and CA licensees who have emails on file and to the Board's Public Notice list. Paper surveys were mailed to licensees without email and to complainants of closed cases (from the past year). The link to the survey was also posted to the Board's web site. Executive Director Skinner provided the Board a summary of the survey outcomes and a comparison to last year's responses. We greatly improved in our "overall satisfaction" responses. The statistics show that we have improved our outreach to the public. There was comment that the meeting minutes need to be disseminated and posted more regularly. Dr. Côté congratulated the staff, the investigators, and Executive Director for great service.

#### **5. Board's Best Practices**

Annually, the Board completes the "best practices" self-assessment as part of the required key performance measures. The Board's response is made part of the Annual Performance Progress Report which is posted to the agency's web site.

### **CORRESPONDENCE**

#### ***1. May DCs obtain prescriptive substances, such as dexamethasone, through pharmacies as well as salicylates and lidocaine for phono- or iontophoresis? (Larry Lubcke DC)***

Prescription level is NOT okay; the statute disallows the use. The Board will amend the policy to include the phrase "over-the-counter" topical substances.

Dexamethasone is a packaged steroid available over-the-counter; prescription strength is not allowed (per ORS 684.010(4)). If licensees want prescriptive rights the Board advises speaking to the chiropractic professional association about lobbying for those rights. Dr. Sharron Fuchs also suggested lobbying with the Pharmacy Board may be useful also.

Regarding Dr. Walter Wiese's similar request for prescription level lidocaine, the Board maintains that only over-the-counter topical substances may be used (this is aside from the minor surgery policy statement). The Board will update its current policy for lidocaine and salicylates to clarify that the scope only allows for an "over-the-counter" topical. Notify Drs. Lubcke and Wiese that they can use OTC's.

The updated lidocaine policy will read:

*Use of over-the-counter salicylates and lidocaine substances in phono- or iontophoresis is allowed within the scope of chiropractic practice (phono- or iontophoresis is a procedure where a D.C. uses a topical substance w/ultrasound or low volt galvanic current). (4/11/96) (updated 9/17/15)*

**2. Can a DC sell THC infused lotions to patients w/Medical Marijuana card? (P. Domm DC)**

Any DC or chiropractic clinic wanting to sell these products would need to be a licensed medical marijuana dispensary under OLCC and OHA rules.

Dr. Fuchs commented that it was her understanding” that effective October 1 anyone over the age of 21 could step into what was a medical marijuana dispensary and buy recreational or other-use substances.” Correct. “As of October 1<sup>st</sup> it becomes an over-the-counter.” No, it is a recreational product, not a therapeutic product; if they are buying it for recreational use, that use is different than buying it for therapeutic use. Dr. Fuchs believes each person is going to make that determination themselves. Dr. Côté reminded Dr. Fuchs that the question at hand is “can a DC sell THC infused lotions to patients?” People still need to buy the products from a *licensed* medical marijuana dispensary. Fuchs added that the buyer does not need a medical marijuana card; the Board agreed. Fuchs also assumed that a licensee may determine that the patient may benefit from the use of marijuana and suggest the patient do some research – at which point the patient may decide to purchase the recreational marijuana. The regulating body is the OLCC.

Dr. Kouzes also added - If it was ever an OTC, the pharmacist’s definition is that it is packaged and labeled for sale.

The answer to the question is “no, DCs may not sell THC infused lotions/products unless a licensee becomes a licensed medical dispensary.”

Dr. Côté noted that there is a second question in the board packet, “What is the Board’s opinion on the dispensing of medical marijuana product with high concentration of CBD (versus THC) for pain management?” CBD is another fraction of marijuana but it is not psychotropic. It doesn’t produce paranoia and anxiety, but rest, sleep and happiness. The dispensing of this product must follow OLCC rules and regulations.

**12:30 PM     ADJOURN     Break for lunch and Convene Executive Session**

**4:05 PM     RECONVENE**

**IN THE MATTERS OF**

The Board has discussed delegating its testing (of minor surgery, proctology, and obstetrics and gynecology) to the NBCE. The National Board of Chiropractic Examiners drafted a delegation proposal. Dr. Young moved to accept that proposal without changing our current DC testing fee structure. Dr. Kouzes seconded the motion. Dr. Côté recused himself as he is an NBCE District Director. Mr. Taylor, aye; Dr. Kouzes, aye; Dr. Young, aye; Dr. Goldeen, aye; and Dr. Romanick, aye. Motion passed.

**Case # 2014-1033**

The Board proposed to issue a Notice of Disciplinary Action for 6 hours of CE in Documentation, Licensee must meet with a board-appointed mentor for one year, and successfully pass two additional file pulls. Dr. Young moved to accept the determination; Dr. Goldeen seconded the motion. Discussion: The Board established that the Licensee should meet with the mentor no less than four times in the first three months, with a minimum of five meetings overall. Mentor will be directed to determine whether more meetings are appropriate/required. These meetings must be face-to-face (not done by

telephone). Dr. Young moved on the amended motion; Dr. Goldeen seconded the amended motion. All in favor. Motion passed unanimously.

**Case # 2015 -5011**

The Board proposed to issue a Notice to Deny Certification. Dr. Goldeen moved to accept the determination; Dr. Kouzes seconded the motion. All in favor. Motion passed unanimously.

**Case #s 2011-1026 et al**

Based on the results of the ProBE ethics course, the Board proposed to issue a Notice of Proposed Suspension. Dr. Young moved to accept the determination; Dr. Goldeen seconded the motion. All in favor. Motion passed unanimously.

**Case # 2014-2003**

The Board determined insufficient evidence/case closed. Dr. Kouzes moved to accept the determination; Dr. Goldeen seconded the motion. All in favor. Motion passed unanimously.

**Case # 2015-1010**

The Board proposed no statutory violation/case closed. Mr. Taylor moved to accept; Dr. Kouzes seconded the motion. All in favor. Motion passed unanimously.

**Case # 2015-3022**

The Board proposed a contingent case closed with a letter of concern. Licensee will be required to present at the Board's New Doctor Introduction scheduled in October 2015. Dr. Young moved to accept the determination; Dr. Kouzes seconded the motion. All in favor. Motion passed unanimously.

In relation to the above case, the Board proposed to open a new case on the chiropractic assistant involved in the case. Dr. Young moved to accept the determination; Dr. Romanick seconded the motion. All in favor. Motion passed unanimously.

**Case # 2015-1008**

The Board proposed a contingent case closed with letter of concern regarding special informed consent form and duty to report issues. Dr. Kouzes moved to accept the determination; Dr. Young seconded the motion. All in favor. Motion passed unanimously.

**Case # 2015-1003**

The Board proposed no statutory violation with a letter of concern regarding supervision of staff and office flow procedures. Dr. Goldeen moved to accept the determination; Dr. Romanick seconded the motion. All in favor. Motion passed unanimously.

In relation to the above case, the Board proposed to open a new case against the chiropractic assistant. Dr. Goldeen moved to accept the Board's determination; Dr. Young seconded the motion. All in favor. Motion passed unanimously.

**Case # 2015-1009**

The Board proposed no statutory violation/case closed. Dr. Romanick moved to accept the determination; Dr. Kouzes seconded the motion. All in favor. Motion passed unanimously.

**Case # 2015-3006**

The Board proposed no statutory violation with a letter of concern regarding web site monitoring. Dr. Côté moved to accept the determination; Dr. Young seconded the motion. All in favor. Motion passed unanimously.

**WORK SESSION**

**Agency Ad hoc Committee Membership** – Executive Director Skinner reported. The Peer Review Committee is not an ad hoc committee because we have ORS and OAR to mandate their existence. ETSDP, Rule Advisory Committee, and the Minor Surgery Committee are ad hoc. Skinner recommends disbanding all ad hoc committees effective December 31, 2015, as some have had the same membership for many years. The Board could decide to go into rulemaking or adopt a new policy on how the ad hoc committees will be formed. The Board could also decide to not change the rules or adopt new policy and convene the ad hoc committees on an as-needed basis. Dr. Young also added that we will remove the lists of the supposed “standing” committee, but they are ad hoc. Mr. Taylor asked for clarification on the status of ad hoc versus law/rule mandated. He recommended we make an official statement in November about the disbanding. In January 2016, when we have officer elections and other committee appointments, we can see if there are new members to appoint.

**Administrative Rules**

Board members were each assigned to review rules and draft any proposed changes they feel need to be made. Dr. Goldeen and Dr. Young have submitted their recommendations. Other members will submit their proposals to staff for review in November – to be submitted by October 15.

Dr. Goldeen moved to adjourn the meeting; Dr. Romanick seconded the motion. All in favor. Motion passed unanimously.

**ADJOURN 4:35 PM**