



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

PUBLIC SESSION MEETING MINUTES

Morrow Crane Bldg. 3218 Pringle Road SE

2nd Floor Large Conference Room

Portland, Oregon

September 27, 2012

Members Present

Ann Goldeen DC, President

Daniel Cote DC Vice-President

Doug Dick, Public Member, Secretary

Todd Bilby DC

Huma Pierce DC

Christine Robinson DC

Staff Present

Dave McTeague, Executive Director

Kelly Beringer, Admin Asst

Shari Barrett, Office Specialist

Tom Rozinski, Investigator

Lori Lindley, AG

Others: Don Ferrante DC; Kira Richards, Ivonne Feinauer, and Valeen Tripoli

CONVENE: 1:45 pm

ADOPTION OF THE AGENDA - adopted as presented.

COMMENTS

Dr. Ferrante appeared with Kira Richards to discuss creating a requirement for CPR/AED for DCs and possibly CAs (Correspondence #2).

CORRESPONDENCE #2

Kira Richards CA, Request to require CPR, AED training

Dr. Ferrante presented with Kira Richards to discuss creating a requirement for CPR and/or AED for DCs. Many other professionals are required to have this, but DCs do not. The requirement would decrease the DCs' liability and protect the patient. Kira was recently trained to train. There are two levels of training – the standard “heart saver” course and the professional level training, the latter is what they recommend for DCs.

According to Kira, the first initial (professional) program is about 5-6 hours in length (usually depends on the number of participants). She recommends the American Heart Association program as the Red Cross recently raised their fees, but does not appear to provide the same level of training and follow up (notice of changes, etc.).

The standard “heart saver” (non-professional) class with six people attending is about two and one-half hours in length sometimes longer if more people attend (the max is 10). For the BLS (professional) Standard Healthcare Provider course (with six people) runs about four to four and one half hours. A class with 10 people may last up to six hours. Kira added that the six hour class could cover the CA's CE. The DCs would be allowed CE credit – approximately 4-6 hours with the health care provider (professional) CPR program.



In addition, both Kira and Dr. Ferrante feel strongly that every office should have an AED machine; the cost runs about \$1,100. Kira states that OSHA requires that any building over 50,000 square feet is required to have one.

Dr. Ferrante added that First Aid training is also wise to include. A standard first aid class is two to four hours in length. To take both classes (CPR/First Aid) a DC might attend 8 hours (possibly over two days). The BLS professional also goes over child and infant CPR and choking.

2:05 pm Kira Richards and Dr. Ferrante left.

(After the In the Matters of) The Board continued the proposal of CPR, First Aid and/or AED for CA & DC licensees. The Board proposes to require:

- “Basic Heart Saver” CPR certification for **CAs** - effective July 1, 2013
 1. The Board will require the training be completed by the CA’s first renewal. *CPR will not be added to the CA Initial Training, at this time.*
 2. All other renewing CAs, will be required to start acquiring their CPR certification by July 1, 2013 for their 2014 CA renewal. The training may be completed earlier.
 3. All CAs will be required to re-certify every two years.
- “BLS Standard Healthcare Provider CPR and First Aid course/s for **DCs**
 1. All active licensees must be certified in both CPR and First Aid by their 2014 license renewal date;
 2. DCs will also be required to re-certify every two years.
 3. AED is not required, but optional for additional CE credit
 4. New DCs renewing for the first time are exempt from the CPR/First Aid requirement.

The Board will create a policy that AED training will be accepted for CE credit. CE credit will be credited per hour actually attended. No motion from the Board is required as this falls under the “additional CE” citation part of the continuing education rule.

IN THE MATTERS OF

Michelle Hebert, DC applicant

The Board proposed to issue the license with a file pulls for two years in light of stipulations issued by the State of Arizona. Ann Goldeen DC moved to accept the Board’s determination; Christine Robinson DC seconded the motion. All in favor. Huma Pierce DC, aye; Todd Bilby DC aye; Daniel Coté DC, aye; Ann Goldeen DC, aye; Christine Robinson DC, aye and Doug Dick, aye.

Rachel Halter, CA applicant

The Board proposed to issue a Notice to Deny Licensure for this chiropractic assistant applicant for multiple convictions and lack of candor on her application. Ann Goldeen moved to accept this determination; Doug Dick seconded the motion. All in favor. Huma Pierce DC, aye; Todd Bilby DC aye; Daniel Coté DC, aye; Ann Goldeen DC, aye; Christine Robinson DC, aye and Doug Dick, aye.

Christian Schuster DC

The Board proposed to extend probation by one year with file pulls. If licensee does not accept the proposal, the board will propose to suspend licensee for 33 months (amount stayed in previous Final Order) for failure to comply with the previous Final Order. Ann Goldeen moved to accept the Board’s determination; Christine Robinson seconded the motion. All in favor. Huma Pierce DC, aye; Todd

Bilby DC aye; Daniel Coté DC, aye; Ann Goldeen DC, aye; Christine Robinson DC, aye and Doug Dick, aye.

Tyler Rethwill, CA applicant

The Board proposed to issue the chiropractic assistant license with stipulations, including employer notification and at least four (4) random UA's per year. Christine Robinson moved to accept the determination; Huma Pierce seconded the motion. Votes - In favor: Huma Pierce DC; Todd Bilby DC; Daniel Coté DC; and Ann Goldeen DC. Opposed: Doug Dick and Chris Robinson. Motion carries four to two.

Case #12-3018 The Board proposed to close the case with a letter of concern. Doug Dick moved to accept the determination; Todd Bilby seconded the motion. All in favor. Huma Pierce DC, aye; Todd Bilby DC aye; Daniel Coté DC, aye; Ann Goldeen DC, aye; Christine Robinson DC, aye and Doug Dick, aye.

Case #12-2002 The Board proposed insufficient evidence to find a violation. Christine Robinson moved to accept the determination; Doug Dick seconded the motion. All in favor. Huma Pierce DC, aye; Todd Bilby DC aye; Daniel Coté DC, aye; Ann Goldeen DC, aye; Christine Robinson DC, aye and Doug Dick, aye

Case #12-1036 The Board proposed no statutory violation. Daniel Coté moved to accept the determination; Huma Pierce seconded the motion. All in favor. Huma Pierce DC, aye; Todd Bilby DC aye; Daniel Coté DC, aye; Ann Goldeen DC, aye; Christine Robinson DC, aye and Doug Dick, aye.

Case #12-3028 The Board proposed insufficient evidence to find a violation with Letters of Concern to the complainant and licensee regarding release of records and release authorization. Todd Bilby moved to accept the determination; Huma Pierce seconded the motion. All in favor. Huma Pierce DC, aye; Todd Bilby DC aye; Daniel Coté DC, aye; Ann Goldeen DC, aye; Christine Robinson DC, aye and Doug Dick, aye.

Case #12-3005 The Board proposed case closed with a Letter of Concern. The device application is referred to the Board's ETSDP Committee. Doug Dick moved to accept the determination; Huma Pierce seconded the motion. All in favor. Huma Pierce DC, aye; Todd Bilby DC aye; Daniel Coté DC, aye; Ann Goldeen DC, aye; Christine Robinson DC, aye and Doug Dick, aye.

Case #12-1031 The Board proposed no statutory violation with a Letter of Concern.. Ann Goldeen moved to accept the determination; Christine Robinson seconded the motion. All in favor. Huma Pierce DC, aye; Todd Bilby DC aye; Daniel Coté DC, aye; Ann Goldeen DC, aye; Christine Robinson DC, aye and Doug Dick, aye.

Case #12-1038 The Board proposed no statutory violation with a Letter of Concern.. Huma Pierce moved to accept the determination; Doug Dick seconded the motion. All in favor. Todd Bilby DC aye; Daniel Coté DC, aye; Ann Goldeen DC, aye; Christine Robinson DC, aye; Huma Pierce DC, aye; and Doug Dick, aye.

Case #12-3023 The Board proposed no statutory violation. Ann Goldeen moved to accept the determination; Huma Pierce seconded the motion. All in favor. Todd Bilby DC aye; Daniel Coté DC, aye; Ann Goldeen DC, aye; Christine Robinson DC, aye; Huma Pierce DC, aye; and Doug Dick, aye.

Case #12-1012 The Board proposed no statutory violation. Todd Bilby moved to accept the determination; Doug Dick seconded the motion. All in favor. Daniel Coté DC, aye; Ann Goldeen DC, aye; Todd Bilby DC aye; Christine Robinson DC, aye; Huma Pierce DC, aye; and Doug Dick, aye.

Case #12-1029 The Board proposed a contingent case closed if the licensee agrees to read Oregon Revised Statute Chapter 684 and Administrative Rule Chapter 811, and take and pass the OBCE's online Ethics & Jurisprudence exam. Ann Goldeen moved to accept the board's determination; Huma Pierce seconded the motion. All in favor. Daniel Coté DC, aye; Ann Goldeen DC, aye; Todd Bilby DC aye; Christine Robinson DC, aye; Huma Pierce DC, aye; and Doug Dick, aye.

Case #12-3029 The Board proposed no statutory violation. Daniel Coté moved to accept the determination; Doug Dick seconded the motion. All in favor. Daniel Coté DC, aye; Ann Goldeen DC, aye; Todd Bilby DC aye; Christine Robinson DC, aye; Huma Pierce DC, aye; and Doug Dick, aye.

Case #12-1032 The Board proposed no statutory violation. Christine Robinson moved to accept the determination; Todd Bilby seconded the motion. All in favor. Daniel Coté DC, aye; Ann Goldeen DC, aye; Todd Bilby DC aye; Christine Robinson DC, aye; Huma Pierce DC, aye; and Doug Dick, aye.

Correspondence #1 Peter Levy DC, posed fee-splitting question

Bottom line: If you get a commission from third party for supplements your patients are buying, it is fee splitting. The Board advises that DCs may recommend the patient contact the vendor directly. However, Dr. Cote said he believes that a vendor (Standard Process for example) will not sell to the general public. He, however, purchases the product for his patients and re-sells it to them with a slight markup.

DISCUSSION ITEMS

1. Budget & Legislative issues update

Our current biennium projections have improved from last spring. However, the AG expenditure is about \$64,000 over budget. This assumed a large contested case hearing to be held this October and November and at least one more hearing next year. Dave reported we need to request the Legislative Emergency Board in December to approve additional expenditure authority through the end of the biennium. Daniel Cote moved to authorize the Executive Director to go to the E-Board; Doug Dick seconded the motion. All in favor. Daniel Coté DC, aye; Ann Goldeen DC, aye; Todd Bilby DC aye; Christine Robinson DC, aye; Huma Pierce DC, aye; and Doug Dick, aye.

There has been no movement on the proposal for semi-independent status legislation. Dave is still working on draft language to take fees out of statute and to establish a late fee for CA renewal. Also, Dave is working on a proposal to add a part-time position for a chiropractic investigator. The board supports the pay scale that Dave is proposing for the part-time position.

3:00 pm Dr. Goldeen left for the day.

2. Proposed Rule Adoption: Rules of Procedure in Contested Cases Amendments

The board held a rule hearing on September 20 regarding this administrative rule change. No public appeared for the hearing, and only Dr. Sharron Fuchs submitted comment (she wanted to verify whether attorneys who handle contested cases were notified of the proposed change; the notice was sent to everyone on the Board's Public Notice List). The OBCE is proposing to amend this rule to specify that an answer must be made, and affirmative defenses be pled, in the initial response and request for hearing. As a practical matter, this means the respondent, in sexual boundary and unprofessional

conduct cases, may not simply say, "I request a hearing..." but must also provide a specific response to each of the allegations. Then a process of discovery and discussion between the parties follows, which would either result in a negotiated settlement or a contested case hearing. Doug Dick moved to adopt the rule as amended. Christine Robinson seconded the motion. All in favor. Huma Pierce DC, aye; Todd Bilby DC aye; Daniel Coté DC, aye; Christine Robinson DC, aye; and Doug Dick, aye. The adopted rule is attached as an addendum to these minutes.

3. Proposed Rule Amendments: Pre-Paid Treatment Plans rule (discussion)

The Board received email comments from Drs. John Collins and Christopher Pierce on this proposal. After discussion, Dr. Cote proposed that we further change the rule language to disallow the concurrent use of pre-paid plans with insurance billings (in other words, a pre-paid treatment plan may be used only with cash paying patients). Board members agreed that the detailed fee schedule must be in the agreement, with the detailed refund agreement. Given that further drafting of the proposed rule needs to be done, the Board may not be ready for a November 15 hearing.

4. Proposed Rule Amendments: Suspended and probationary DCs (discussion)

Dr. John Collins also made comment on this proposal. After discussion, Dr. Cote proposed the suspended licensee post the suspension order in his office and satellite offices. He also suggests the DC should not be seen in the office. Dr. Pierce questioned the need to post suspension of licensure for offenses other than sexual misconduct such as failing to pay taxes or to pay child support. Both offenses she felt did not merit such posting. The Board will consider require posting for boundary violations and/or fraud, or determine whether posting is required on an as-needed basis. There is a rule hearing scheduled for November 15.

5. FCLB Regional Report: Dr. Cote

Hold over.

6. Policy Issue: Colloidal Silver (carried forward from July meeting discussion)

Hold over.

7. Committee appointments (if any) None made.

8. Continuing Education: Record Keeping Course Questions

Dr. Edith Dal Mas submitted multiple questions to the Board regarding the Record keeping CE requirement for 2013. One issue the Board acted upon was the "grading" of the chart samples. The Board agreed to remove the "grade the notes" requirement. Todd Bilby moved to accept the board's determination to remove the grading element from the CE requirement; Huma Pierce seconded the motion. All in favor. Daniel Coté DC, aye; Todd Bilby DC aye; Christine Robinson DC, aye; Huma Pierce DC, aye; and Doug Dick, aye. *(The board will keep the length of the seminar at six hours.)*

9. Staff Report

No more to report

ADJOURN 3:50p.m.

Today's amended rule will be effective upon filing with the Secretary of State's office.

811-001-0010 Rules of Procedure in Contested Cases

(1) In sexual boundary and unprofessional conduct cases; The Board Requiring an answer to charges as part of notices to parties in contested cases: In addition to the requirements of the Attorney General's Model Rules of Procedure adopted by the Board, the notice to parties in contested cases may include a statement that an answer to the assertions or charges will be requested and, if so, the consequences of failure to answer. A statement of the consequences of failure to answer may be satisfied by enclosing a copy of section (2) of this rule with the notice.

(2) In sexual boundary and unprofessional conduct cases, h-Hearing requests and answers:
Consequences of failure to answer:

(a) A hearing request, and answer when requested, shall be made in writing to the Board by the party or his attorney and an answer shall include the following:

(A) An admission or denial of each factual matter alleged in the notice;

(B) A short and plain statement of each relevant affirmative defense the party may have.

(b) Except for good cause:

(A) Factual matters alleged in the notice and not denied in the answer shall be presumed admitted;

(B) Failure to raise a particular defense in the answer will be considered a waiver of such defense;

(C) New matters alleged in the answer (affirmative defenses) shall be presumed to be denied by the agency; and

(D) Evidence shall not be taken on any issue not raised in the notice and answer.