



Oregon

John A. Kitzhaber, MD, Governor

Oregon Board of Chiropractic Examiners

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Public Session Meeting Minutes
Morrow Crane Building
2nd Floor Board Room, Salem, Oregon
December 1, 2011

Members Present

Ann Goldeen DC, President
Daniel Cote DC, Vice-President
Huma Pierce DC, Secretary
Christine Robinson DC
Todd Bilby DC
Douglas Dick, Public Member
Cookie Parker-Kent, Excused

Staff Present

Dave McTeague, Executive Director
Kelly Beringer, Admin Asst
Tom Rozinski, Investigator
Lori Lindley, Assistant AG

Others: Ivonne Feinauer; Mike Cline LMT

CONVENE 8:30 a.m.

ADOPTION OF THE AGENDA – Adopted as presented.

PUBLIC COMMENTS

In relation to the first discussion item direct supervision of CAs, massage therapists and other health-providers, Mike Cline LMT and Ivonne Feinauer discussed with the board how, in their businesses, they manage the relationships with chiropractors – both with employee status and independent contractor status. They also explained how they complete the CMS forms for those situations.

DISCUSSION ITEMS

1. LMT/Any Trained Person issues; re: billing, CMS Form 1500, supervision, independent contractors vs. employees. (This issue has been continued since the July meeting.)

Dave McTeague opened the discussion. When created, the original draft policy did not demonstrate the recommendation of the Rules Advisory Committee. A better proposal is attached covering independent contractors versus employees, the issues of direct supervision and what direct supervision is. In 2010, the Board created a policy which stated that LMTs must be in the clinic in order that doctors may bill for that service, however, that is a policy and not in administrative rule. The Board last discussed this issue in May or July 2011.

Dave verified that there is an existing rule and policy that chiropractors must be present in the building if the chiropractic assistant is providing therapies. Dr. Cote stated that if the DC uses his NPI to bill then he needs to be (should have been) in the building supervising, (even if it's an LMT); and the LMT should have a CA license. Dr. Pierce suggested that IF the DC has a prescription for the LMT or other professional – even one outside the clinic – then she feels they do not need supervision. There are different views of this issue on the board.

Dave added that the current direct supervision policy states “staff” (potentially, employed LMTs or “other trained persons”) so the policy is not clear.



Dr. Goldeen invited Mike Cline, LMT and Ivonne Feinauer to speak. Ivonne has worked in chiropractic clinics for three years. Mike works with multiple chiropractors and has multiple acupuncturists and LMTs as subcontractors under him. Ivonne added that only their LMTs perform the massage, and they are employees as LMTs, not CAs. The CAs do not provide massage at all. They have always been paid.

The question is do you use the person's NPI who is providing the service or the clinic in which the service is being provided. Ivonne added that they fill out the CMS form showing the LMT is the "provider." She added that how they fill out the form is sometimes based on the insurance provider and the adjuster reading it - how they interpret it. Dr. Cote does not want to get into billing regulation; members agree.

What term best describes everyone other than chiropractic assistants – non-independently licensed professional? Dr. Pierce asked what if you want to maximize your office space? For example, your patients appear for a class at 5 – 6 pm with your (certified) personal trainer, and you leave for the day at 5 pm. You told the patient to attend. Can the class be offered – without supervision? And what if you wanted to bill for it?

Dr. Bilby added that we have jurisdiction over CA's, but we do not over LMTs, etc. Dr. Cote feels we can put regulations on anyone that is providing services for chiropractic patients in our clinics – he proposes, "If we are billing for a provider (non-CA), then that provider must be physically in your facility."

This is a complicated issue, especially in relation to independent contractors. Mike Cline added that he contracts with many chiropractors. Both his NPI and the chiropractor's NPI are on the form; the insurance always pays him (Cline) directly.

The Board also reviewed the "Any Trained Person May..." policy which allows "any trained person" to perform certain tasks without licensure.

After much discussion, the board determined to adopt the following amended policy, and in addition present draft rule language to the Rules Advisory Committee.

Dr. Pierce read the proposed amended draft:

Direct Supervision:

The OBCE was asked if ~~clinic staff~~ licensed chiropractic assistants could provide therapies in a business space next door to the clinic. The OBCE responded that the chiropractic assistant ~~or staff person~~ who is supervised needs to be in the same office space (defined as the same building or space contiguous) as the supervising doctor. OAR 811-035-0001 states, "Direct supervision" means that the licensed Chiropractic Physician is physically present in the clinic, is monitoring the activities of the supervisee in the clinic and is available to intervene, if necessary. (7/31/03)

If an employee and/or independent contractor is independently licensed to perform prescribed services within their scope of practice they may do so without direct supervision of the chiropractic physician. (12/1/11)

First motion: Dr. Pierce moved to adopt the direct supervision policy as amended (above); Dr. Cote seconded the motion. All in favor. Bilby, aye; Dick, aye; Robinson, aye; Goldeen, aye; Cote, aye and Pierce, aye.

Second motion: Daniel Cote moved to refer draft language (yet to be created) to the Rules Advisory Committee. The language should clarify billing as pertains to the provider NPI, who provided service and the physical location where the service was provided. Huma Pierce seconded the motion. All in favor. Bilby, aye; Dick, aye; Robinson, aye; Goldeen, aye; Cote, aye and Pierce, aye.

2. Proposed Rule Amendments: CA fees to be non-refundable, one-year time limit on applications.

After the board reviewed the staff proposal to change the administrative rule, Dr. Daniel Cote moved to go into permanent rulemaking for OAR 811-010-0110; Dr. Todd Bilby seconded the motion. All in favor. Huma Pierce, aye; Todd Bilby, aye; Daniel Cote, aye; Doug Dick, aye; Christine Robinson, aye; and Ann Goldeen, aye. The rule also addresses the life of an application.

3. Policy Issue: NBCE examination for CA applicants (Dr. Cote)

Dr. Cote reported that the NBCE is creating a national examination for chiropractic assistants after attending the NBCE examination committee meeting in Greeley, Colorado. The first NBCE CA examination will be available June/July 2012. The exam will be given at 10 computer testing stations in Oregon.

He would like the Board to adopt the NBCE's new Chiropractic Assistant exam. The proposed NBCE test has 100 questions and the exam will likely cost \$100 (payable to the NBCE, the OBCE will then drop its \$35 exam fee). The exam includes ethics, boundaries, and draping as well. He recommends staff provide the NBCE outline to the current (Oregon) board-approved trainers to insure that they are, or will train to the (NBCE) outline. Dr. Cote will draft a BackTalk article on this subject. The Board will have this subject on future public agenda.

In addition, Dr. Cote thinks we should consider increasing the training hours to 24 (up from the current 12). (This would take a formal rules proposal, public hearing and comment were it to move forward.) Public attendee, Yvonne Feinauer supports that idea, and said the quality of the medical assistant (MA) employee is substantially greater than the CA; the requirement would elevate the CA profession. Dr. Cote added that many states are going to a tiered CA licensure – adding massage, or radiology, etc. on top of a basic CA training. Dr. Cote added that there is no scope of practice for MA's. *(Someone else commented that MAs are regulated by the Oregon Medical Board and licensed, however, they are not regulated by the OMB at all.)* Other issues discussed: Expanding the CA licensure (scope?). Who may supervise an MA? (Also, should MAs be allowed to license as CAs without initial training?)

4. Strategic Planning Issues for March 2012 Retreat

OBCE staff is making arrangements to meet March 15 and 16, (or 16 and 17) 2012 Thursday, Friday, and/or part of Saturday. Dave McTeague has a draft outline of issues the Board may address – look at big picture issues; evaluate strengths, weaknesses, opportunities and challenges; look at existing Strategic Plan; set some long and short term goals; Lori Lindley, AAG, will present training on contested case hearings and working in Executive Session; Doug Dick would like to see another report of case outcomes (board actions) and how they compare to what we are doing presently. Another long term discussion may include what it would mean if we move to semi-independent agency status. Board members will review the current strategic plan and goals.

5. Committee Appointments (Peer Review, Rules, ETSDP)

Two active licensees, Drs. Lauren Aklinski (Portland) and David Trommler (Happy Valley) have shown interest in being on the Board's Rules Advisory Committee. Dave suggested Dr. Dan Lach

(Corvallis) for the ETSDP Committee. After discussion, the Board appointed these doctors to the Rules and ETSDP Committees. Motion: Daniel Cote moved to accept the appointments as made; Todd Bilby seconded the motion. All in favor. Pierce, aye; Dick, aye; Goldeen, aye; Robinson, aye; Bilby, aye; and Cote, aye.

6. Board Best Practices key performance measure annual review

Move this discussion to the January 2012 agenda. In addition, Dave will provide a budget breakdown - expenses versus budget.

7. Policy Issue: Statues/Rules review

Dr. Ann Goldeen identified sections of both the rules and statutes she feels we might amend, delete or converse about. Drs. Cote and Bilby suggest this is an excellent topic for the retreat. Dr. Goldeen agrees and encourages all members to review the full regulations for other suggested changes; add to the retreat agenda.

8. Electronic Board packets

After the October board meeting the Board briefly discussed the use of electronic files for case review. Staff determined that we can get Kingston 16 GB flash drives for a reasonable price; the entire board packet should fit on it for each meeting. Lori Lindley has some experience working with her other boards who have already gone electronic. In addition to purchasing the flash drives, the staff will also purchase 2-3 laptops for a reasonable price to insure that all members are able to view the material each meeting.

Staff will be working to address board members' concerns about managing open/ongoing cases. What restrictions will there be on the information? Are drives assigned to individual members? How will any comments which were made to the document be managed? How hard is it to track the lead on a case, and track that person's comments? Can items be ADDED to the drive, such as an e-Word document or emails (i.e. last minute add-ons)? The staff will attempt to use electronic files for the January 2012 board meeting. We will likely have one master paper file (with page numbers added) and the electronic file at each meeting.

9. Continuing Education mandated hours, outline and expectations for record keeping

In July the Board instituted an additional four hours CE in boundaries and charting/record keeping. The board discussed whether the required courses are available in order to meet the board's expectations. Members agree there are plenty of Ethics & boundaries programs available. On the matter of record keeping and charting though, there is a lack; Board staff will communicate to current known CE vendors about the requirement. Proper use of electronic charting should be part of the training.

In order to better manage the requirement, Dave McTeague suggested requiring the 2 hours of Boundaries/Ethics for 2012; and in 2013, require 2 hours charting. Daniel Cote moved to amend the previous policy to require the boundaries in 2012. Doug Dick seconded the motion. All in favor. Robinson, aye; Bilby, aye; Goldeen, aye; Pierce, aye; Dick, aye; and Cote, aye. Discussion: Are we going to have a list of what that course may include. Documentation of completed courses should be submitted to the board immediately upon completion. Staff will run a report at the end of 2012 to determine compliance. The Board will establish some criteria for the record keeping and charting.

10. Policy Issue: Draft policy for reviewing foreign chiropractic colleges following recent adoption of administrative rule changes

The Board reviewed the draft policy.

1. OBCE staff will confirm that the candidate program is in good standing with the respective CCE and that it was in good standing when the applicant graduated;
2. Confirm through CCEI that US CCE mutually recognizes and endorses the accreditation actions and decisions of the CCEA by policy (contact the CCEI through the Secretariat).

UWS President, Dr. Joe Brimhall made some suggestions on the implementation of this second step – he “recommended that the confirmation of endorsement be obtained through CCEI [because] CCEI has a policy of mutual recognition and endorsement among the four member agencies: CCE (US), ECCE (Europe), CCEA (Australasia) and CFCREAB (Canada). The endorsement of the other agencies by CCE would be established by virtue of their membership in CCEI and their adoption of the existing mutual endorsement and recognition policy.”

3. Correspond with the candidate program.
4. a designated board member will review the educational standards of the respective CCE (i.e. the chiropractic course curriculum or catalog
5. A designated board member or committee should compare the program to Oregon’s Revised Statutes: 684.050(1)(c) and 684.050(3)
6. Any identified issues of concern would be addressed; including correspondence with candidate program.
7. OBCE would vote for formal approval or disapproval in a public meeting.

It was agreed that yearly, OBCE staff will verify that colleges are maintaining CCE or CCE-I status. In addition, staff will research whether CCE-I has an auto-notification system in place similar to CCE-USA’s. CCE-USA faxes any change of accreditation to all state regulatory boards. Doug Dick moved to adopt the proposed plan of implementation with the amendment. Huma Pierce seconded. All in favor. Cote, aye; Robinson, aye; Bilby, aye; Goldeen, aye; Dick, aye; and Pierce, aye. (The Board is now evaluating Murdoch University in Australia.)

11. Staff Report

Briefly Dave mentioned the upcoming meeting with representatives who are working to get state agencies providing more online services (license renewals, etc.)

CORRESPONDENCE

Rebecca Tobias, (Frank Moscato AAL), questions regarding suspended chiropractors

On behalf of Frank Moscato AAL, Ms. Tobias submitted a series of questions requesting clarification on what is/is not allowed for a suspended chiropractic licensee. After some discussion, the Board determined that the best answer is, “No patient contact is allowed at all. Any and all administrative tasks, billing, etc. must be performed out of the area of any patient, either in a secluded area of the clinic, or after hours.” Dave McTeague will generate a final draft policy for the Board’s review in January 2012. He will send Mr. Moscato the draft – prior to the January meeting.

10:55 AM BREAK to EXECUTIVE Session
3:20 PM RETURN TO PUBLIC Session

IN THE MATTERS OF

Case #11-1031 (*case # corrected from 3021 to 1031*)

The Board found no statutory violation in the matter. Daniel Cote moved to accept the Board's determination. Doug Dick seconded the motion. Huma Pierce is recused. All in favor. Robinson, aye; Bilby, aye; Goldeen, aye; Dick, aye; and Cote, aye.

Case #11-1039

The Board found no statutory violation in the matter. Ann Goldeen moved to accept the Board's determination. Daniel Cote seconded the motion. All in favor. Robinson, aye; Bilby, aye; Pierce, aye; Dick, aye; Goldeen, aye; and Cote, aye.

Case #11-3009

The Board determined insufficient evidence to find a violation. Daniel Cote moved to accept the Board's determination. Doug Dick seconded the motion. All in favor. Robinson, aye; Bilby, aye; Pierce, aye; Goldeen, aye; Dick, aye; and Cote, aye.

Case #11-5026 Christopher Clemens DC

The Board proposed to suspend the license for failure to pay taxes as required by statute when a notice of insufficiency is received from the Department of Revenue. Daniel Cote moved to accept the Board's determination; Todd Bilby seconded the motion. All in favor. In addition the Board determines to allow the Department of Revenue to intervene (to cover our legal expenses). All in favor. Robinson, aye; Pierce, aye; Goldeen, aye; Dick, aye; Bilby, aye; and Cote, aye.

Case #11-1043

The Board found no statutory violation in the matter. The Board will issue a Letter of Concern. Daniel Cote moved to accept the Board's determination. Huma Pierce seconded the motion. All in favor. Robinson, aye; Bilby, aye; Goldeen, aye; Dick, aye; Pierce, aye; and Cote, aye.

Case #s 11-3003 and 11-3004 Kim Jameson DC

The Board determined to issue a proposed Notice for a two year suspension, followed by five year probation with at least two years of random file pulls, \$10,000 civil penalty, 12 hours CE on ethics and 12 hours on charting; completion of the NBCE Ethics exam and mentoring by affiliated monitors; with regular board interviews to check in. Huma Pierce moved to accept the Board's determination; Todd Bilby seconded the motion. All in favor. Robinson, aye; Cote, aye; Goldeen, aye; Dick, aye; Pierce, aye; and Bilby, aye.

Case #11-1041

The Board found no statutory violation in the matter. Huma Pierce moved to accept the Board's determination. Doug Dick seconded the motion. All in favor. Robinson, aye; Bilby, aye; Goldeen, aye; Cote, aye; Dick, aye; and Pierce, aye

Case #11-3022

The Board found no statutory violation in the matter. The Board will issue a Letter of Concern. Todd Bilby moved to accept the Board's determination. Huma Pierce seconded the motion. All in favor. Robinson, aye; Dick, aye; Goldeen, aye; Cote, aye; Pierce, aye; and Bilby, aye.

Case #11-3033

The Board found no statutory violation in the matter. The Board will issue a Letter of Concern. Ann

Goldeen moved to accept the Board's determination. Christine Robinson seconded the motion. All in favor. Pierce, aye; Bilby, aye; Cote, aye; Dick, aye; Goldeen, aye; and Robinson, aye.

Case #11-1040

The Board determined insufficient evidence to find a violation. The Board will issue a Letter of Concern. Huma Pierce moved to accept the Board's determination. Todd Bilby seconded the motion. All in favor. Cote, aye; Dick, aye; Goldeen, aye; Robinson, aye; Pierce, aye; and Bilby, aye.

Case #10-1029

The Board determined insufficient evidence to find a violation. Ann Goldeen moved to accept the Board's determination. Daniel Coté seconded the motion. All in favor. Dick, aye; Bilby, aye; Robinson, aye; Pierce, aye; Cote, aye; and Ann Goldeen, aye.

Continuing Education - CE Audit Outcome

Cynthia Colwell DC – Case # 2011 – 5030 .) The doctor requested a hardship waiver. In May 2012 Dr. Colwell signed the Renewal Notice & CE affidavit; however, she did not complete the CE. The Board proposed to issue a Notice of Proposed \$250 civil penalty for falsely signing the affidavit, plus \$50 per hour not completed (\$50 x 20 hours) for a total fine of \$1,250; The board determined that she must complete the 20 hours CE within 60 days. Her name will be automatically added to the audit for the next three years. Daniel Coté moved to accept the Board's determination; Todd Bilby seconded the motion. Robinson, aye; Pierce, aye; Dick, aye; Goldeen, aye; Bilby, aye; and Cote, aye.

Regarding three licensees who failed to respond to the OBCE's Audit (phone calls and letters) the board is looking further into the matters to determine if discipline is appropriate. If so, the board discussed assessing each licensee a \$250 civil penalty plus \$50/hour not completed, or proven completed for a total each of \$1,250. In addition, licensees will have 30 days to submit proof or their licenses will be suspended; IF the proof of CE is produced, waive the \$50/hour fine (for each hour submitted). Licensees will each be added automatically to the random audit for the next three years. *(Names were not disclosed while information gathering.)*

There were CA's who did not comply with the audit request also. However, the Board determined to give them 30 more days to provide the proof, why they didn't respond, etc. Revisit in January 2012.

Rebekah Conklin, CA Applicant

After review of Ms. Conklin's application and history, the Board determined to issue the CA license with stipulations to disclose the history to all future employers. In addition, one random UA must be performed in the next 3 months. Daniel Coté moved to accept the board's determination; Doug Dick seconded the motion. All in favor. Robinson, aye; Bilby, aye; Goldeen, aye; Cote, aye; Dick, aye; and Pierce, aye.

Jonathan Hansel DC

The Board approved an amendment of the existing Consent Order to allow for the church counselor in lieu of the other counselor; with a quarterly check in and resulting report from the existing counselor. Daniel Cote moved to accept the Board's determination; Huma Pierce seconded the motion. All in favor. Dick, aye; Robinson, aye; Goldeen, aye; Cote, aye; Bilby, aye and Pierce, aye.

3:30 PM ADJOURN