



Oregon

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Oregon Board of Chiropractic Examiners

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Public Session Meeting Minutes

University of Western States – Hampton Hall

Portland, Oregon

January 19, 2012

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, Teleconferenced

Staff Present

Dave McTeague, Executive Director

Kelly Beringer, Admin Asst

Tom Rozinski, Investigator

Lori Lindley, Assistant AG

Shari Barrett, Office Specialist

Others: J. Michael Burke DC; Jim Heider, Exec. Director of PT Board; Michelle Waggoner DC (PRC)

CONVENE 8:30 a.m.

ADOPTION OF THE AGENDA Adopted as presented

PUBLIC COMMENTS Dr. J. Michael Burke will speak to the CE and Budget issues.

DISCUSSION ITEMS (recorded as addressed in the meeting)

#7 Policy Issue: Semi-Independent Agency status

Jim Heider, Executive Director of the Physical Therapy Board appeared to talk about semi independence. The PT Board went semi independent (SI) in 1999. There are currently 14 agencies in the semi-independence model, and three are health-related boards. Some of the benefits and cost savings are: SI agencies do not need to rent space from state facilities, they do their own public contracting and purchasing, they don't use interagency agreements, they do not need to use Shared Client Services, (accounting services) and BAM, LFO, etc.

What is mandatory – adhering to public records and meeting laws; use DOJ for counsel and representation; maintain tort coverage; maintain participation in PERS. Fiscal accountability – SI's must maintain accounts in FDIC banks; report financially to DAS annually. On a biennial basis, an SI agency needs to have an independent audit (Secretary of State selects an independent auditor). Budgets – PT Board has a biennial budget, and it is established through the rule process; overall the budget can be adopted within three months start to finish (unlike non-SI budgets which may take 12-18 months).

Administrative accountability – Statute allows SI agencies to create and adopt their own personnel contract and purchasing policies (new stricter regulations were adopted for health-related SI boards), but DAS (Department of Administrative Services) has to approve them. The SI agencies are still under the same timelines for handling complaints and cases.

The 14 agencies gather frequently to share experiences on such matters as affirmative action plans, best practices, etc. Going semi-independent requires a broad-base of skills. Jim Heider knows, and has



confidence in, Dave McTeague's ability to manage the OBCE as an SI agency. The Board's statute needs to be revised in order to change to the SI status. Board members are still accountable to the Governor. Lori Lindley added that the SI Board has a higher standard of obligation and oversight.

Mr. Heider left.

BOARD OFFICER ELECTIONS

Nominations were made – reappoint Dr. Ann Goldeen as President (Christine Robinson seconded the motion) all in favor. Daniel Cote was re-nominated for Vice-President (Cookie Parker-Kent seconded the motion) Motion passed: Daniel Cote, aye; Huma Pierce, aye; Ann Goldeen, aye; Todd Bilby, aye; Doug Dick, aye; Christine Robinson, aye; and Cookie Parker-Kent, aye. At the end of the meeting Doug Dick accepted the nomination for secretary. Motion passed: Daniel Cote, aye; Ann Goldeen, aye; Todd Bilby, aye; Doug Dick, aye; Christine Robinson, aye; and Cookie Parker-Kent, aye, excused; Huma Pierce.

The FCLB/NBCE delegates – Ann Goldeen nominated Daniel Cote as the FCLB and NBCE delegate; Huma Pierce seconded the motion. All in favor. Huma nominated Todd Bilby as the alternate delegate; Daniel Cote seconded the motion. All in favor. Daniel Cote, aye; Huma Pierce, aye; Ann Goldeen, aye; Todd Bilby, aye; Doug Dick, aye; Christine Robinson, aye; and Cookie Parker-Kent, aye. Committee liaisons: Huma Pierce continues as the Rules Committee liaison position, Daniel Cote as CE advisor, and Todd Bilby will serve as the board liaison to the ETSDP committee. Daniel Cote will be the liaison between the Oregon Chiropractic Association and the Board.

1. Proposed Rules: Any Trained Person issues; billing identifiers, supervision *(Continued from last meeting.)*

The Rules Committee wants the Board to clarify what it is trying to accomplish – direct or indirect supervision of unlicensed / unlicensed people, and how it is billed. The board discussed the possible scenarios – such as, if a DC is billing under his NPI, then the service provider for which he bills needs to be directly supervised. Most commonly, the DC bills for the CAs services under his NPI. Dave McTeague also added that the Board has its “Any trained person” policy to consider in the mix. Dr. Cote feels “any trained person” needs to be defined. The Board is not ready to draft language. Dave referred the board back to his memo and the points he feels need to be addressed. This issue went to the Rules Committee last year, but the issues involved LMT billing and direct supervision. There are cross-related issues; there is a lack of clarity regarding the CMS 1500 billing form requirements. There was discussion whether the “Any trained person” policy should be moved into administrative rule with clarifications. Dr. Cote said he would work on draft rule language.

4. Policy Issue: Committee Appointments 9:30 AM

Michelle Waggoner DC applied for the open position on the board's Peer Review Committee. Introductions were made. She would like to make sure that chiropractors put out a positive impression to the public, and to help police ourselves. She reads the public protection reports and is familiar with some of the work the Board has done. She is interested in making a difference and wants to educate people. She does not perform IMEs. She's been in practice for five and ½ years. She's a graduate of UWS. She is an active member on the Rules Advisory Committee. The Board appointed Dr. Waggoner to the Board's Peer Review Committee.

2. Continuing Education outline for 2013 record keeping requirement

The discussion is about the board's statement and criteria for these hours that are required in 2013. We received a letter from Dr. Freedland (hand-carried to board). Some input has been given about the number of hours and the frequency. Dr. Goldeen feels that going through the exercise of making a chart note within a workshop would prove beneficial. Dr. Burke added that having the PRC review the chart samples (as suggested) has a punitive feel. It is Dr. Burke's belief that people should document what they did, and then apply their clinical reasoning. The licensee can ask themselves if these findings justify treatment. Doug Dick added that it's the digital chart noting that is repetitive, and a licensee not explaining what's going on with the patient's progress, or lack thereof.

Dr. Côté commented that his preference is two hours every two years, so licensees do not have any excuse for poor recordkeeping should a complaint arise. When asked, Dr. Burke suggested six hours CE in charting (similar to the number of hours the board frequently requires in disciplinary cases).

Dr. Goldeen proposed a class where there is didactic training, the attendees take notes (charts), switch with another attendee, and the instructor grades the final outcome. The course could be pass/fail. Drs. Robinson and Pierce disagree with a pass/fail approach. The courses must be pre-approved by the board. Dr. Cote suggested requiring six hours initially, and two hours every other year thereafter. The Board discussed again whether NEW doctors need the six hours of record keeping. Dave added, the course should include clinical reasoning in relation to note taking. The requirement is part of the annual CE requirement, not in addition to.

Dr. Pierce asked if in the six hours, there is some provision for different techniques? Dr. Goldeen added that any DC has to do a chart note that anyone can read. It doesn't matter what your technique is, the notes should answer the questions, "What did you find wrong with the patient and what were you doing?" At the Board's request, Dr. Burke agreed to provide a course outline prior to the March meeting.

3. Strategic Planning Issues for March 2012 Meeting & Retreat

Silver Falls State Park – March 15-16 2012 (the evening of the 15th and day of the 16th). Dave noted the cost was extremely reasonable and the room charges also include the meeting room and meals. Dave reviewed his memo of topics; including:

1. Key issues faced by other chiropractic boards
2. Survey results, key issues for OBCE, and profession in general (survey),
3. OBCE projections: financial and workload projections.
4. State government structure issues: consolidation vs. semi-independence
5. Review existing Key Performance Measures
6. Leadership planning: Board committee and board member recruitment/development.

plus

- Strengths, Weaknesses, Opportunities, Challenges (SWOC) analysis
- Review Existing Strategic Plan and Goals.
- Identify Key Issues, short term and long term goals
- Continue discussion of key issues and determine short term and long term goals.
- Statutes & Rules Review
- Identify potential legislative concepts for 2013

We don't have the funds for a facilitator, so board members will take turns at facilitating issues. Dave asked if members would like to complete the pre-retreat planning exercise used in their 2007 planning meeting, and they said yes. Lastly, he asked for input for a stakeholder's survey.

The board briefly discussed the Groupon advertising. Lori Lindley added that LivingSocial.com and Groupon are both working to develop contracts which are not fee-splitting.

5. Board Best Practices key performance measure annual review

Board members filled out the form and turned them in.

10:50 AM (break)

6. Suspended Chiropractors draft policy

Frank Moscato was planning to attend today, but could not since he was ill. The question is what can/cannot a suspended DC do? Dave suggested adopting the policy as an interim policy since Mr. Moscato wants to make additional comment.

Discussion: Dr. Bilby also asked about the "loophole" about the DC doing billing and tasks not related to patient billing; they could be in front where patients can see them. The Board agreed; they may not be in sight of patients. Tom Rozinski asked, what can we do about the suspended doctors claiming they are on "sabbatical"? The board took no action regarding these claims.

The board will adopt the policy with Dr. Bilby's changes. Dr. Cote moved to adopt the policy; Dr. Bilby seconded the motion. All in favor. Pierce, aye; Dick, aye; Cookie Parker-Kent, aye; Goldeen, aye; Bilby, aye; Pierce, aye; and Cote, aye.

The policy language is as follows:

SUSPENDED CHIROPRACTIC PHYSICIANS

Chiropractic physicians who are placed on suspension may not practice chiropractic in any way or portray themselves to patients in any way as potentially practicing.

A limited exception includes providing expert testimony at hearing or deposition, information to legal counsel in regards to a patient's case that is in a legal process of resolution regarding care provided prior to the suspension.

Suspended chiropractic physicians may not perform intake functions and greeting patients. Generally, suspended DCs should not be visible to patients as that could induce the belief they are practicing chiropractic.

Suspended chiropractic physicians may not provide any therapies as a CA. They may not personally sell or provide supplements or other products to clinic patients or persons coming in to the clinic. They may not perform adjustments on family or friends while they are suspended as this is the practice of chiropractic. They may not take films or perform any diagnostic procedures.

Suspended chiropractic physicians may not engage in marketing which leads clients, consumers or patients to believe they are a practicing chiropractic physician at the time they are suspended.

They may not place new advertising which indicates in any way the suspended chiropractic physician is practicing chiropractic during the suspension period.

Suspended chiropractic physicians are not prohibited from performing such business functions such as billing and attending tasks not related to patient scheduling, care, treatment or evaluation; but, must be out of sight of any patients.

8. Report on budget issues

Dr. Burke commented. He suggests that we drop the dry needling rule, which is currently on appeal. He feels the money that it costs the board to take the matter through the legal process is not worth the small benefit to patients.

Dave explained the current budget challenges. Legal costs have been very high so far this biennium (since July 1, 2011). We have four cases in the Court of Appeals, an all time high. We have revocation hearing scheduled for April, which will be expensive. Dave explained that we are going to need a supplemental appropriation with the current trend on cases, contested cases, and hearings.

Dave explained we will have to make this supplemental appropriation request to the Legislative Emergency Board (not the February legislative session) sometime between the spring and fall of this year.

9. Staff Report

Dave emailed the 2012 Board meeting dates.

CORRESPONDENCE

1. Dan Lach DC - May CAs utilize Class IV lasers?

The Board requested Dr. Joel Agresta's input on this question. Dr. Agresta teaches physical therapy at UWS. He suggested that CAs are not qualified to use hot lasers (IV). There is too much power, too much risk. Class IIIb is a lower risk for harm and does not rise to the same level of danger as Class IV.. The board is polled – use or not use: Robinson, no; Pierce, yes with supervision; Parker-Kent, yes with DC present; Doug, no; Cote, no; and Goldeen, no. Bilby not present. Majority vote: Only DCs may employ the class IIIb and IV lasers. CAs may only use class I – IIIa. This continues current policy.

2. Questions from Allstate

Dave feels it is difficult to answer these questions without more information or context. Dr. Coté thinks Lori Lindley should answer the questions; Lori says the questions are too vague to give specific responses. If she has specific questions with factual information, that would better enable the board to answer the questions. Dave will draft a response, which will also state that additional information or context is needed to answer some of these questions.

11:18 AM ADJOURN to Executive Session

3:15 PM RECONVENE Public for In the Matters

IN THE MATTERS OF

Case # 2011-5014 The Board determined insufficient evidence with a letter of concern. Daniel Cote moved to accept the board's determination; Cookie Parker-Kent seconded the violation. All in favor.

Huma Pierce, aye; Doug Dick, aye; Todd Bilby, aye; Christine Robinson, aye; Ann Goldeen, aye; Daniel Cote, aye; and Cookie Parker-Kent, aye.

Case #s 11-3023, 11-3024, 11-3025, 11-3026, and 11-3027 The Board proposed no statutory violation. Doug Dick moved to accept the determination; Christine Robinson seconded the motion. Bilby, aye; Robinson, aye; Dick, aye; and Parker-Kent, aye. Drs. Daniel Cote, Huma Pierce and Ann Goldeen recused themselves from the matter.

Case #2011-3037 The board determined Case Closed with a letter of concern. Huma Pierce moved to accept the determination; Daniel Cote seconded the motion. All in favor. Bilby, aye; Parker-Kent, aye; Doug Dick, aye; Christine Robinson, aye; Huma Pierce, aye; Ann Goldeen, aye; and Daniel Cote.

Case #2011-3001 The board determined no statutory violation with a letter of concern. Huma Pierce moved to accept the determination; Cookie Parker-Kent seconded the motion. All in favor. Christine Robinson, aye; Daniel Cote, aye; Todd Bilby, aye; Ann Goldeen, aye; Doug Dick, aye; Huma Pierce, aye; and Cookie Parker-Kent, aye.

Case #2011-3038 The Board determined no statutory violation. Cookie Parker-Kent moved to accept, and Huma Pierce seconded the motion. All in favor. Daniel Cote, aye; Doug Dick, aye; Ann Goldeen, aye; Huma Pierce, aye; Todd Bilby, aye; Cookie Parker-Kent, aye; and Christine Robinson, aye.

Case #2011-2004 The board determined a Contingent Case Closed if the doctor accepts two file reviews in next year, with record keeping CE (6 hours) due 90 days after the stipulation is signed. Todd Bilby moved to accept the Board's determination; Doug Dick seconded the motion. All in favor. Huma Pierce, aye; Christine Robinson, Doug Dick, aye; Daniel Cote, aye; Cookie Parker-Kent, aye; Todd Bilby, aye; and Ann Goldeen, aye.

Case #2011-1038 The Board determined no statutory violation. Todd Bilby moved to accept the board's determination; Daniel Cote seconded the motion. All in favor. Christine Robinson, aye; Doug Dick, aye; Cookie Parker-Kent, aye; Daniel Cote, aye; Huma Pierce, aye; Todd Bilby, aye; and Ann Goldeen, aye.

Case #2011-5028 The Board determined no statutory violation. Cookie Parker-Kent moved to accept the determination; Christine Robinson seconded the motion. All in favor. Todd Bilby, aye; Daniel Cote, aye; Doug Dick, aye; Huma Pierce, aye; Cookie Parker-Kent, aye; Ann Goldeen, aye; and Christine Robinson, aye.

Case #2011-1033 Timothy Lind DC

The board proposed to assess a \$500 civil penalty payable within 90 days of the date of the Proposed Notice of Discipline. In addition, any changes in the next year to pre-paid contracts must first be reviewed by the board; probation for one (1) year; licensee must make the fee schedule available to the board within 30 days; must make his fee schedule available to patient verbally and in writing. Licensee must refund patient (complainant) within 30 days of Notice; complete six (6) hrs CE covering coding/billing (due within 90 days). Dr. Cote inserted that failure to comply with any part of the order, the license will be suspended. Violations are of the pre-pay plan rule and failure to provide fee schedules. Cookie Parker-Kent moved to accept the board's determination; Huma Pierce seconded the

motion. All in favor. Doug Dick, aye; Ann Goldeen, aye; Christine Robinson, aye; Daniel Cote, aye; Todd Bilby, aye; Huma Pierce, aye; and Cookie Parker-Kent, aye.

Case #2011-2006 The board determined Case Closed with a letter of concern. Cookie Parker-Kent moved to accept the determination; Christine Robinson seconded the motion. All in favor. Todd Bilby, aye; Doug Dick, aye; Huma Pierce, aye; Christine Robinson, aye; Ann Goldeen, aye; Daniel Cote, aye; and Cookie Parker-Kent, aye.

Case # 2011-3030 and 2011-3031 The Board proposed Cases Closed with letters of concern to both licensees. Doug Dick moved to accept the determination; Daniel Cote seconded the motion. All in favor. Cookie Parker Parker-Kent, aye; Ann Goldeen, aye; Todd Bilby, aye; Doug Dick, aye; and Daniel Cote, aye. Huma Pierce, recused.

Case #2011-3036 Case closed with a letter of apology to the affected DC. Ann Goldeen moved to accept the Board's determination; Doug Dick seconded the motion. All in favor. Bilby, aye; Cote, aye; Parker-Kent, aye; Ann Goldeen, aye; Christine Robinson, aye; and Dick, aye. Huma Pierce recused.

Case #2011-1045 The Board determined no statutory violation. Christine Robinson moved to accept the motion; Doug Dick seconded the motion. All in favor. Todd Bilby, aye; Huma Pierce, aye; Daniel Cote, aye; Cookie Parker-Kent, aye; Ann Goldeen, aye; Christine Robinson, aye; and Doug Dick, aye.

Case #2011-5029 Brett Stine DC

The Board proposed a Consent Order – licensee must abide by the conditions of the California order prior to actively license or practice in Oregon. Christine Robinson moved to accept board's determination; Huma Pierce seconded the motion. All in favor. Cookie Parker-Kent, aye; Daniel Cote, aye; Doug Dick, aye; Ann Goldeen, aye; Huma Pierce, aye; Christine Robinson, aye; and Todd Bilby, aye.

McDonald, Aubrey CA applicant (New Case #2011-5000)

The Board proposed to license with standard stipulations to disclose past misdemeanors. Daniel Cote moved to accept the determination; Christine Robinson seconded the motion. Parker-Kent, aye; Huma Pierce, aye; Todd Bilby, aye; Daniel Cote, aye; Ann Goldeen, aye and Christine Robinson, aye. Doug Dick voted nay. Motion passed.

Moll DC, Gregory (Case #2009-5007)

The suspended doctor is out of compliance with the terms of his Final Order. The terms of his suspension are "at least" 18 months, so the board proposes that his suspension will continue. Staff will send a letter to him to that effect. Cookie Parker-Kent moved to accept the determination; Christine Robinson seconded the motion. Discussion: Doug Dick requested clarification on how long the suspension may last. Doug Dick, aye; Huma Pierce, aye; Ann Goldeen, aye; Christine Robinson, aye; Todd Bilby, aye; and Cookie Parker-Kent, aye. Daniel Cote recused himself.

3:45 PM ADJOURN to Executive Session (Christine Robinson left for the day.)

4:25 PM RECONVENE Public Session

Continuing Education Audit and CE request

Regarding two proposed notices of discipline of which the Board voted on December 1, the licensees did meet their continuing education requirements, and the Board voted to withdraw its previous notices.

Daniel Cote moved to withdraw the notices; Cookie Parker-Kent seconded the motion. All in favor.

Doug Dick, aye; Todd Bilby, aye; Ann Goldeen, aye; Doug Dick, aye; Daniel Cote, aye; Cookie Parker-Kent, aye. Huma Pierce, excused.

ADJOURN 4:30 PM