



# Oregon

John A. Kitzhaber, MD, Governor

Oregon Board of Chiropractic Examiners

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## Public Session Meeting Minutes July 21, 2011

University of Western States  
Hampton Hall - 2900 NE 132<sup>nd</sup> Ave,  
Portland, Oregon

### Members Present

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

### Staff Present

Dave McTeague, Executive Director  
Kelly Beringer, Admin Asst  
Tom Rozinski, Investigator  
Lori Lindley, Assistant AG  
Donna Dougan, Admin Asst  
Shari Barrett, Office Specialist

Other Attendees: Arn Strasser DC, Joe Pfeiffer DC, Franchesca Vermillion DC and David Peterson DC

**CONVENE 12:45 p.m.**

### **ADOPTION OF THE AGENDA**

### DISCUSSION ITEMS

#### **Agenda #2. Groupon, Pay for Performance and Internet Marketing**

The Rules Advisory Committee proposed a exemption or safe harbor for Groupon like offers. They provided draft language and also Dr. Megehee provided a draft as well. The Rules Advisory Committee did not see any harm to the public, considering the customer is choosing the chiropractor. Some were concerned with devaluing chiropractic with this kind of advertising; Michael Smith, AAL provided a memo detailing his concerns with the proposed language..

Dave McTeague summarized where we are in the process. The Committee came up with a draft language; everyone was in favor except Michael Smith. The Board can vote to begin the process of permanent rulemaking. The draft language could still be amended during the rulemaking process; there would be more comment, and a hearing after the next board meeting. Today merely starts the process. The Rules Committee tried to write the language broad enough to cover similar offerings. They did not want to limit it to online-type advertisements. They definitely wanted to prohibit use of accident reports and telemarketing; that may need further refinement.

Lori Lindley added that a similar group, "LivingSocial" is changing their contracts for medical professionals in Oregon; she asked if the Board has communicated with Groupon on the same note. Dave said he had contacted Groupon earlier about changing the advertising arrangement to avoid the fee splitting, but they did not return his call.



**12:55 PM** **Arn Strasser DC** appeared to make a statement in opposition to changing the rule, stating, "...The question is, what do schemes such as Groupon, where we would join restaurants, nail parlors and tanning salons, along with medical providers such as dentists and cosmetic surgeons, do to our credibility and how the public perceives us? In my opinion, offering discounted services in a fee

splitting arrangement with companies such as Groupon undermines our credibility...Groupon is an advertising scheme. It is his opinion that this undermines our (Chiropractic) profession. It lowers our credibility; and reduces the perception of our services to a minimum. The only way we're going to grow our profession is to maintain a high-level of credibility and competence. *(Dr. Strasser's full statement is posted online with the Board's Groupon Web Statement; other comments in favor of a rule change were posted in the Summer 2011 BackTalk newsletter.)*

Dr. Strasser said this is a big thing in dentistry and read some facts about losses they will take. Lori Lindley added that the Dental Board has determined that it is a rule violation for their dentists to use LivingSocial which prompted LivingSocial.com to change their policy. Dr. Coté feels we should not start trying to mold the administrative rules to adapt to Groupon.

Ann Goldeen polled the Board members – should we enter into Rulemaking or table the matter (make no change). No rule change: Robinson, Bilby, Parker-Kent, Dick, Goldeen, and Cote. Dr. Pierce is undecided. There is no motion to go into rulemaking. Cote made a motion to post on the web that Groupon is fee splitting. Licensees may finalize any contracts already signed, but new contracts (anything similar to Groupon) may not be entered into. Christine Robinson seconded. All in favor: Robinson, aye; Bilby, aye; Parker-Kent, aye; Dick, aye; Goldeen, aye; and Cote, aye. Opposed: Pierce, nay. Six in favor; one opposed. Conclude discussion at 1:20 PM.

#### **Agenda #1. Dry Needling courses**

Dave McTeague updated the Board on recent events. The Acupuncture association (OAAOM) is appealing the Board's adoption of the rule; they also filed a stay of the rule in the meantime. Dr. Goldeen added that at least nine people attended Dr. Fishkin's dry needling class; staff added that all (12) are registered with the Board. Dave added that the immediate task for the board is official approval of Dr. Fishkin's course. Dr. Coté moved to approve David Fishkin's dry needling course; Doug Dick seconded the motion. All in favor. Parker-Kent, aye; Goldeen, aye; Pierce, aye; Bilby, aye; Robinson, aye; Cote, aye; and Dick, aye.

Secondly, members have an amended UWS course to review and approve. Doug Dick moved to accept the revised course outline; Cookie Parker-Kent seconded the motion. All in favor. Pierce, aye; Bilby, aye; Robinson, aye; Cote, aye; Parker-Kent, aye; Goldeen, aye; and Dick, aye.

Also, Dr. Yun-tao Ma is also a licensed acupuncturist in Colorado. Members feel that his course compares to the other board approved courses. Cookie Parker-Kent moved to accept Yun-tao Ma's dry needling course; Daniel Cote seconded the motion. All in favor. Pierce, aye; Bilby, aye; Robinson, aye; Goldeen, aye; Dick, aye; Parker-Kent, aye and Cote, aye.

Lastly, Jan Dommerholt is a PT in Maryland. Per Dave he has a different concept of dry needling training (and a much longer course). The Board will request Mr. Dommerholt to develop a 24 hour course. No further action for now on this one.

Regarding three informed consents. After discussion including “tender points,” remove “diagnosing,” the use of “clean” versus “sterile,” etc. Dr. Bilby agreed to work with Dr. Sharron Fuchs to clean up the informed consent forms to create one Board-approved informed consent form.

**Agenda #3. Informed Consent (should written consents be required?)**

The Rules Advisory Committee recommended no change to this rule; no action taken. Daniel Cote moved to accept the Rules Advisory Committee’s recommendation; Christine Robinson seconded the motion. All in favor. Pierce, aye; Dick, aye; Bilby, aye; Parker-Kent, aye; Cote, aye; Robinson, aye; and Goldeen, aye.

**Agenda #4. Boundaries rule (should there be specific waiting periods?)**

Joe Pfeifer DC, Vice President of Clinics sat in on the discussion. The Board had asked the Rules Advisory Committee (RAC) to look at existing boundary rules and determine whether a specific cooling off period should be established for licensees who wish to terminate the doctor/patient relationship so as to later possibly enter into a personal relationship. The RAC recommended no change in the current rule. In relation to UWS clinic, Dr. Goldeen asked Dr. Pfeifer if there is teaching about relationships and how quickly they change? Dr. Pfeifer agrees that increasing awareness with the students is a great thing. Cookie Parker-Kent asks if the topic and its impact can be brought out in an ethics class. She added that it should be clear: you do not seek a partner from your patient pool. RAC suggested that evidence should be created (e.g. a letter) that care was terminated. Dr. Pfeifer added that the rule is well written; he thinks the issue is whether students or practitioners understand the imbalance of power between themselves and the patient. There doesn’t seem to be a shortage of information about these issues. The Board discussed what can be done to get the profession to understand the power differential (there is plenty of educational information available already). Dr. Pfeifer added that NCMIC offers a workshop once a year to every Chiropractic College and they touch heavily on boundaries.

The Board briefly discussed the creation of mandatory CE. Daniel Cote moved to adopt specific CE requirements for the 2012 license renewal period in that DCs must take 2 hours boundaries training, and 2 hours chart and recordkeeping as part of their regular hours. In each year thereafter licensees must alternate 2 hours charting (one year) and 2 hours boundaries in the next. The Board did not set an end date for the requirement. The first reporting period will be July 2012. First year (new) licensees are exempt. Cookie Parker-Kent seconded the motion. All in favor. Robinson, aye; Bilby, aye; Dick, aye; Goldeen, aye; Goldeen, aye; Parker-Kent, aye; and Cote, aye. (Discussion ended 2:10 PM)

**Agenda #5. LMT/Any Trained Person issues re: billing, CMS Form 1500, supervision, and independent contractors vs. employees.**

The RAC was asked to weigh in on the above issues; Dave McTeague reviewed the RAC recommendation: they tried to address the first two questions posed. They didn’t want to get into the billing issues with the Form 1500 (it’s a billing issue). They discussed different practice scenarios about supervising. On supervision of clinic staff, the recommendation was to clarify that the existing policy specifically refers to chiropractic assistants; it currently implies all staff – including LMTs. An LMT may work independently from the DC.

The billing issue is still up in the air; the issue exists when an LMT treats one of his/her own patients and asks the DC to bill under his NPI number. Dr. Cote added that his LMT bills under her own NPI number in this situation; its fraud for the DC to indicate s/he did supervise when in fact s/he did not.

Dave read the reverse of the HCFA form which states that the immediate personal supervision; one interpretation is being right there onsite. Dave suggests licensees check with their insurance providers or attorney to figure out whether their procedures are okay or not. We have not received any complaint from an insurance company regarding these billing issues

Staff just sent out an article on this topic in the BackTalk. Get more input from the licensee base. The issue was carried over to the next meeting for more discussion.

**6. Accepting Graduates of foreign chiropractic colleges whose regional CCEs are part of the Council on Chiropractic Education International.**

Daniel Cote moved to accept the rule language as proposed by the RAC and to go into permanent rulemaking; Huma Pierce seconded the motion. All in favor. Parker-Kent, aye; Dick, aye; Bilby, aye; Robinson, aye; Cote, aye; Goldeen, aye; and Pierce, aye. The following three rules are proposed to be amended as follows:

**OAR 811-020-0006 Statement of Purpose** It is the purpose of this Board to approve only those schools teaching the schedule of minimum educational requirements as defined by the Council on Chiropractic Education (CCE) Standards. These schools will also be evaluated for minimum educational requirements in minor surgery, proctology and physiotherapy (ORS 684.050(4)), subjects which are not required by CCE standards. These programs will also be evaluated for competency in minor surgery, proctology and physiotherapy (ORS 684.050(4)), subjects which are not necessary required by CCE. The Board may also approve those programs that are mutually recognized and endorsed by CCE through membership in the Councils on Chiropractic Education International, on a case-by-case basis.

(1) ~~Effective April 1, 1998,~~ 120 hours is required in physiotherapy. Any chiropractic physician also licensed as a physical therapist is exempt from this requirement.

(2) ~~Effective April 1, 1998,~~ 36 hours (survey course) is required in minor surgery/proctology (in addition to the standard courses of physical examination, emergency/first aid, histology etc.).

(3) Applicants for licensure in Oregon who have graduated from schools which do not meet the requirements for physiotherapy, minor surgery, or proctology must provide evidence of sufficient hours in these subjects from any approved CCE school (undergraduate or post-graduate educational program).

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**811-020-0011 List of Approved Schools** The list of approved programs ~~schools~~ shall be made available [~~yearly~~] as published by the Council on Chiropractic Education and approved by the board, along with any other educational programs that are recognized and endorsed by CCE and approved by the Board.

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**811-021-0005 Educational Standards for Chiropractic Colleges** The educational standards for Chiropractic colleges published by the Council on Chiropractic Education or their equivalent, ~~current as of September 21, 2011, adopted January 2007,~~ is hereby adopted and prescribed.

**7. DynaMed presentation by David Peterson DC**

Dr. Peterson asked to come before the Board to show the board why this is an important tool for the profession. The web site to which he referred and perused is www.ohsu.edu/xd/education/library. One of the resources available to all license holders is called DynaMed. Any variety of topics can be

researched. He noted this resource is family practice oriented and may be most useful for conditions not seen as frequently in chiropractic practice. A federal grant through OHSU is making this resource available to DCs at no cost. Dr. Peterson will work with OBCE staff to provide this information to the profession in the near term future.

**2:45 PM**      **ADJOURN to Executive Session**

**3:30 PM**      **RE-CONVENE**

**IN THE MATTERS OF**

**Case #2011-1017** The Board determined no statutory violation with a letter of concern to the doctor. Christine Robinson moved to approve the Board's determination; Daniel Cote seconded the motion. All in favor. Dick, aye; Pierce, aye; Bilby, aye; Parker-Kent, aye; Robinson, aye; Cote, aye and Goldeen, aye.

**Case #2011-1019**      The Board proposed a contingent Case Closed with a letter of concern for lack of documenting modalities especially time spent modalities. Daniel Cote moved to accept the Board's determination; Doug Dick seconded the motion. All in favor. Pierce, aye; Bilby, aye; Parker-Kent, aye; Robinson, aye; Goldeen, aye; Cote, aye and Dick, aye.

**Case #2011-1020**      The Board proposed a contingent Case Closed provided: Licensee write a letter of apology to complainant with an explanation of his findings. Dr. Cote moved to accept the Board's determination; Doug Dick seconded this motion as well. All in favor. Pierce, aye; Bilby, aye; Parker-Kent, aye; Robinson, aye; Goldeen, aye; Cote, aye and Dick, aye.

**Case #2011-5010**      The Board proposed a contingent case closed if Licensee completes a four hour professional boundaries continuing education, and his wife obtains her license as a chiropractic assistant Doug Dick moved to accept the determination; Daniel Cote seconded the motion. All in favor. Pierce, aye; Bilby, aye; Parker-Kent, aye; Robinson, aye; Goldeen, aye; Cote, aye and Dick, aye.

**Case #2009-3010**      **David Avolio DC**

The Board determined to accept the recommendations and report of the administrative law judge, and issue a Final Order of Discipline. Daniel Cote moved to accept the Board's determination; Huma Pierce seconded the motion. All in favor. Bilby, aye; Parker-Kent, aye; Robinson, aye; Goldeen, aye; Dick, aye; Cote, aye and Pierce, aye.

**Case #2011-3000**      The Board proposed a contingent case closed as long as the licensee agrees in writing that he must supervise his staff and that he understands the requirements of CMS Form 1500; The Board proposes dismiss the previous order that was issued in March 2011. Huma Pierce moved to accept the Board's determination; Doug Dick seconded the motion. The Board also voted to withdraw the notice of proposed disciplinary action voted upon in March, but not issue. All in favor. Bilby, aye; Parker-Kent, aye; Robinson, aye; Goldeen, aye; Cote, aye; Dick, aye; and Pierce, aye.

**Case #2011-3009**      **Maurice Cephus DC**

The Board proposed to issue a Letter of Reprimand with a \$1500 civil penalty, a requirement to complete 12 hours of continuing education on chart noting and a two year probation with random file pulls. Daniel Cote moved to accept the determination; Huma Pierce seconded the motion. All in favor. Bilby, aye; Parker-Kent, aye; Robinson, aye; Goldeen, aye; Dick, aye; Cote, aye; and Pierce, aye.

**Case #2011-3014** (Regarding a CE course for Chiropractic Assistants) The Board determined a contingent case closed with a Letter of Concern regarding a failure to adequately drape a class participant during a practice demonstration; Licensee must provide the Board a video of any instructing on draping and professional boundaries. Daniel Cote moved to accept the Board's determination; Todd Bilby seconded the motion. All in favor. Parker-Kent, aye; Robinson, aye; Goldeen, aye; Dick, aye; Cote, aye; Bilby, aye; and Pierce, aye.

**Case # 2011-5015 Daniel P. Miller DC**, random file review per 2009-1006 Final Order For failure to comply with an existing Final Order, the Board proposed a mentoring program with continued file pulls, 12 hours live CE on chart noting, a civil penalty \$1000. Add at one more year of probation. Daniel Cote moved to accept the Board's determination; Ann Goldeen seconded the motion. Todd Bilby opposed. Six in favor; one opposed. Parker-Kent, aye; Robinson, aye; Dick, aye; Pierce, aye; Bilby, aye; Goldeen, aye; and Cote, aye.

**Case # 2011-5012 Debbie Willadsen, CA applicant**  
The Board determined to issue the Chiropractic Assistant License with standard disclosure stipulations. Daniel Cote moved to accept the Board's determination; Doug Dick seconded the motion. Robinson, aye; Dick, aye; Pierce, aye; Bilby, aye; Goldeen, aye; Cote, aye; and Parker-Kent, aye. *(A Consent Order has been issued in this case.)*

**3:30 PM ADJOURN for the day**