



Oregon

John A. Kitzhaber, MD, Governor

Oregon Board of Chiropractic Examiners

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Morrow Crane Building,
2nd Floor Large Conference Room
3218 Pringle Road SE #150
Salem, Oregon

Public Session Meeting Minutes May 17, 2011

Members Present

Ann Goldeen DC, President
Daniel Coté DC, Vice-President
Huma Pierce DC, Secretary
Michael Vissers DC
Joyce McClure 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

Other Attendees: Tim Eng LAc, Minga Guerrero DC, Sharron Fuchs DC, Al Thieme LAc, Denny Kasunic LAc, Will Sheppy LAc, Kathleen Haley OMB, Christo Gorawski LAc, Carol Congdon LAc, Collin Stoll LAc, Thane Thieson, Steve Kafoury, Joe Pfeiffer DC UWS, Scott Shephard DC, Zachary Wright

CONVENE 1:00 p.m.

ADOPTION OF THE AGENDA

DISCUSSION ITEMS (ordered discussed is mixed)

5. Policy issue: Groupon, Pay for Performance and Internet Marketing

Scott Shephard DC testified on “behalf of thousands of Oregonians who have successfully gained access to chiropractic care as the result of social media advertising.... Groupon has nothing in common with the sort of fee-splitting referral arrangements that this Board has sought to eliminate in the past, namely because (it) does not covertly influence, deceive or harm the consumer. This is not a case where the consumer receives a recommendation from a health care provider or other professional whose judgment has been secretly corrupted by the promise of a referral fee. Rather, Groupon customers initiate the purchase and relationship on their own volition in response to a notice that is definitively advertising. The customers can then inspect the facility and know the specifics of what they are purchasing, and they can know fully the nature of the service and of the introductory offer. The customers are in complete control of the purchasing process, and in addition, Groupon maintains a customer-friendly refund program...”

Dr. Shephard continued “This Board has also recognized that advertising practices that might technically be considered fee splitting should not be outlawed if they clearly are not harmful. Case in point: in 2008,



the Board was asked by a practicing doctor if a nonprofit could advertise to their members, wherein the doctor could return 10 percent of the monies he or she received in fees back to the school. The Board approved this request. Dr. Shephard proposes this new type of advertising is good for the profession and the public; Groupon expands access to chiropractic. Please consider the benefits to the profession, with no harm to the public. Dr. Shepherd can and will make his written comment available by email.

Minga Guerrero DC commented that she has not ever participated in Groupon, but she supports this type of media. She understands that there are complications for the Board. She gave an example of an insurance carrier asking if they could send over a group of people using the GroupOn coupon; would they all get the similar care; technically they probably would. What if auto insurance companies began to use Groupon? She has some concerns for the profession.

Dr. Guerrero answered Dr. McClure's question about some managing of the GroupOn coupon by locale. Do they say they will not run other ads while you are signed up; an exclusive offer. If they advertise in one zip code, they will halt advertising in another for a brief time. It seems as if it is response driven; in other words, a great response will get a longer time running. Dr. McClure has a concern about that.

Ann Goldeen proposed sending this issue to the Rules Advisory Committee to develop some guidelines. Or, we ask GroupOn to change the way they do business in Oregon so it's not fee splitting. Lori added that the doctor pays a flat fee to Groupon to advertise. Michael Vissers moved to send this matter to the Rules Advisory Committee to adapt our rules to modern marketing. Cookie Parker-Kent seconded the motion. All in favor. Doug Dick, aye; Michael Vissers, aye; Ann Goldeen, aye; Cookie Parker-Kent, aye; Daniel Cote, aye; Huma Pierce, aye; and Joyce McClure, aye.

3. Policy issue: Informed Consent (should written consents be required?)

Dr. Minga Guerrero commented. A requirement for a written informed consent (at the initial patient encounter) is long overdue. It would serve to protect chiropractors and the public better. It should be something written and the patient signs it. Dr. Sunny Kierstyn submitted a brief written comment in which she supports this proposed policy. Dr. Goldeen added that FCLB has established a task force to look at this and increase regulatory awareness and trying to develop model standards. Sharron Fuchs DC originally proposed a written consent and supports creating a uniform model written consent. Dr. Goldeen suggested getting input from the chiropractic association. Doug Dick moved that the Board send the concept to the Rules Advisory committee to consider a requirement for written versus oral informed consent. Michael Vissers seconded the motion. All in favor. McClure, aye; Cote, aye; Parker-Kent, aye; Pierce, aye; Goldeen, aye; Dick, aye; and Vissers, aye.

1. Public Hearing on Proposed Dry Needling rule, 1:30 p.m.

Tim Eng LAc. Will the Board be able to protect the public in multiple situations (giving examples)? He wants the Board to be careful in the number of hours they determine the highest standard of proficiency; 12 hours is not enough. Dr. Coté asked what he thinks is an appropriate number of hours: his response was 150 to 170 hours.

Minga Guerrero DC. She supports the inclusion of dry needling into the chiropractic scope, and comments that more than 12 hours would be redundant.

Sharron Fuchs DC. Dr. Fuchs hopes we do not rehash the whole issue of course length today (as she thought it was already settled).

Al Thieme LAc representing the OAAOM. – Entered into the record his letter and the OAAOM's and we retain the right to retail all the records on this hearing and all previous hearings.) The OBCE does not have the statutory authority to dramatically change its scope of practice specifically acupuncture. Mr. Thieme cites an old OBCE action against Jim Olshove DC where the OBCE determined that dry needling was not part of the scope of practice. He continued to allege that "UWS altered their testimony – one time saying they do not offer the course in their core curriculum to another time saying that they do indeed offer dry needling as core curriculum." Our attorney will be here shortly and will hand out documents when he arrives.

Denny Kasunic LAc. has been treated by a chiropractor for various health concerns since he was a teenager. He currently works with the president of the OCA. In his opinion the rule discussed today will dilute the integrity of the chiropractic profession; cause distrust. The common person that would come to see either a DC or an LAc right now would be confused as to what profession he/she is treating the patient. Taking a 12 hours course does not even begin to give appropriate training.

Willard Sheppy LAc. He is not representing any organization. Dry needling is an aggressive type of needling. If patients go to a chiropractor, they may become afraid of acupuncture. He asks that the Board train the DCs to cause no harm; he would like to see more than 12 hours trained. He does recommend lengthening the course so that the DC has the opportunity to work on someone, and come back for more feedback.

Kathleen Haley, Exec Director of the Medical Board. We have consistently opposed the practice of dry needling by chiropractors. If the Board goes forward in this rule proposal, at least set a specific set of classes. In addition, OMB recommends at least 100 hours of training. Define trigger points, specific needles, insertion and extraction; add specific informed consent (and state that the technique is not acupuncture); set rules for advertising of dry needling. She added that Medical Doctors who wish to add acupuncture to their education are required to take 300 hours. Dr. Guerrero asked Ms. Haley if she could clarify how many of the 300 hours are taught on dry needling; is one-third devoted to dry needling (referring to the recommended 100 hours). Ms. Haley could not answer to that. She believes that we are all on the same page with regards to patient safety. "Please increase the hours far beyond 12."

Christo Gorawski LAc. Cited an OBCE finding from 2002 that dry needling is not within the scope of chiropractic practice, including an old ruling against a DC for providing dry needling. He added that he received a letter dated May 16, 2011 from the OMA (Gwen Dayton JD) regarding the education the OBCE has so far cited as the minimum requirement (12 hours). In the letter they request that the trainer of the education be highly qualified in the area of dry needling. (Jan Dommerholt's written comments also suggest trained trainers.)

Carole Congdon LAc. LMT – she works with chiropractors at a wellness center. She also does not think the 12 hours is nearly enough (training). You can get into some danger zones with going straight to the trigger points when that is not indicated and could be contraindicated.

Collin Stoll OCOM. What has been said has clarified our position as a board. There are no schools except UWS teaching dry needling. A Minnesota school (chiropractic or oriental medicine?) recommends at least 100 hours; 12 hours is not adequate. The public is going to assume the procedure is acupuncture regardless of the informed consent.

Thane Tienson representing the AAOAM. Challenges this board's legal authority to adopt this rule; it violates the current provisions of ORS 684; it also violates the ORS for acupuncture. He cited a 2009 board action that dry needling is not in the scope of practice. This procedure is ceremonial in that you have already determined that dry needling is allowed within the scope of chiropractic practice, etc. It makes this process a sham. There is no fiscal impact with the modification of the rule. We have no alternative but to challenge the rule. He has been retained by the AAOAM since 4-6 weeks ago.

Steven Kafoury (an attorney but not commenting today on behalf of the acupuncturist). Your (OBCE's) job is to determine whether dry needling is within the scope of practice. The only place it could be included is in the language regarding "therapeutic" and no other chiropractic college teaches dry needling. He says "we called up every chiropractic college" and asked if we could take a dry needling course, and every college said no.

2:35 PM Dr. Goldeen closed the public rule hearing.

2. (2:45 PM) Work Session: Proposed Dry needling rule

The Board discussed this topic and other issues raised in the hearing (including the Olshove matter which included his treatment of the ear which is acupuncture). Dr. McClure added that one of our goals in training dry needling is to insure that licensees have enough background information to safely practice. Lori Lindley added that the board should add to the record that it has received advice from the Assistant Attorney General dated April 28, 2011, which states that "anything that is a therapeutic measure and is taught at a chiropractic college is considered to be within the scope of chiropractic practice in Oregon."

The Board discussed what might be the best number of hours training before making its final motions. Dr. Vissers also suggested the board consider a sunset clause in the rule.

Motion 1 and Motion 2: Dr. Vissers made a motion that dry needling is within the scope of chiropractic as determined by our legal counsel with the provision of a certification. And I'm going to propose 24 hours of education. Joyce McClure seconded the motion. Discussion: Doug Dick likes Dr. Coté's suggestion for a sunset rule. Dr. Vissers originally thought a sunset rule would be good, but as this is a treatment (versus e.g. the sunset clause for the clinical justification rule) he does not think it's a good idea. (The Board did not adopt this as part of the motion.) Dr. Cote prefers 12 hours. All in favor to adopt the dry needling rule; and, motion for the 24 hours training carries with four votes in favor (three opposed). In favor are Vissers, aye; McClure, aye; Dick, aye; and Parker-Kent, aye. Opposed to the 24 hour requirement are Coté, Pierce and Goldeen. Motion passed.

Also, Dr. McClure asked whether we want to add a mention of insertion and extraction of the needle, not just placement.

Dr. Vissers moved to adopt Fishkin's 12 hour class as Part A; Parker-Kent seconded the motion. He withdrew the motion and made a new motion.

Motion 3: Dr. Michael Vissers moved that dry needling courses may only be provided by a licensed health care provider who is trained and certified in the dry needling. Cookie Parker-Kent seconded the motion. All in favor. Dick, aye; Parker-Kent, aye; Pierce, aye; Cote, aye; Goldeen, aye; McClure, aye; and Vissers, aye.

Motion 4: Dr. Vissers moved that David Fishkin DC's 12 hour course be "Part A" of the approved course; licensees need an additional 12 hours to meet the requirements. Ann Goldeen seconded the motion. All in favor. Cote, aye; Vissers, aye; McClure, aye; Goldeen, aye; Dick, aye; Pierce, aye and Parker-Kent, aye.

Motion 5: Dr. McClure proposed to amend the rule language to include some mention about "insertion and extraction of the needle." She proposed, "Dry needling is a technique used to evaluate and treat myofascial trigger points that uses the insertion and extraction of a dry needle." Parker-Kent seconded the motion. All in favor. Vissers, aye; Cote, aye; Dick, aye; Goldeen, aye; Pierce, aye; McClure, aye and Parker-Kent, aye.

3:10 PM ADJOURN to Executive Session

(3:30 PM Dr. Vissers left for the day)

3:40 PM RE-CONVENE to Public Session

4. Policy issue: Boundaries rule (should there be specific waiting periods?)

Ann Goldeen recommended sending this issue to the Rules Advisory Committee (RAC) for a recommendation. Dr. McClure added that this is problematic because we pretty regularly discipline a doctor for this behavior. Dave added that the Board needs to really outline what it wants from the RAC. Dr. Goldeen suggested that a letter of termination and a defined time period (e.g. 60 days) makes it clear.

7. Legislative Report

Our budget was passed through the house; Doctor's Title Act is moving through the process. With the revision of the law, licensees may use "DC" or "Chiropractic Physician".

8. Staff Report

The July meeting is on July 21 (3rd Thursday) at University of Western States; Dr. Brimhall (President) invited the Board. Cookie Parker-Kent will stay on the board until a public member is appointed to take her place; she may be back in July. Dave added that we need to put the "effective date" of the dry needling rule at June 15, 2011.

6. FCLB Report (Drs. Goldeen & Coté)

Daniel Coté and Ann Goldeen attended the most recent FCLB conference in Florida, and reported on a few of the "hot" topics. Dr. Coté shared that Dr. McClure left a great impression with the FCLB, even asked her to run for District Director. Members applauded Dr. McClure's representation of the Oregon Board.

Travel to treat – still a big national issue. The FCLB proposed having a national license, or application fee to practice from state to state. The regulatory board would issue a “stamp” to the “applicant” showing the date and length of time the treating physician will be in the state (after verifying the applicant’s home state license status). Oregon created a Travel to Treat law in 1995; and to date, there have not been any complaints in Oregon.

CCE, or equivalent to CCE, accreditation. Oregon rule says only “CCE,” we could change the rule to include “or CCE equivalent” which would open the door for graduates of the international schools of chiropractic. The Board will continue to address this issue in July.

Other issues: James Winterstein suggested that the chiropractic profession is stagnant; that we’re not thriving. He thinks chiropractic could be extinct over the next 20 years. NBCE is developing a standardized training and testing for CAs, including 30 hour online didactic and in-office work. And NBCE suggested using the Ethics test to assess doctors, not just for discipline.

Dr. Coté attended the accrediting standards workshop. The NBCE made a couple changes – the Ethics and Boundaries test is now essay format, and the exam can be adjusted to fit a board. They are changing the entire Part IV approach to proficiency. It has been shown to be more efficient and shows their competency. The IBC exists to help countries like Spain to establish exam standards.

IN THE MATTERS OF

DC applicant, Richard Belhumeur. The Board determined to deny his application for licensure until he completes his probation. Doug Dick moved and Daniel Coté seconded the motion. All in favor. Pierce, aye; Coté, aye; McClure, aye; Dick, aye; Goldeen, aye; and Parker-Kent, aye.

Brent Warner DC. The Board determined that Dr. Warner is out of compliance with his final order (signed on March 24, 2010). He must pass NBCE’s ProBe exam within 6 months of this renewed notice (as stated in the original notice) or forfeit his license. Joyce McClure moved to accept the board’s determination; Huma Pierce seconded the motion. All in favor. Dick, aye; Pierce, aye; Parker-Kent, aye; Goldeen, aye; McClure, aye; and Coté, aye. *(After consulting with ProBE folks, Dr. Warner signed a new Stipulated Final Order agreeing to a psychological examination instead.)*

Case #2011-5009 CA applicant, Daniel Krueger

The Board proposed to license with the stipulations to notify all future employers of the past felony. Doug Dick moved to accept the Board’s determination; Joyce McClure seconded the motion. All in favor. Pierce, aye; Parker-Kent, aye; Goldeen, aye; McClure, aye; Dick, aye; and Coté, aye.

Case # 2011-1002 Elisha Monger

The Board proposed a \$2500 civil penalty for unlicensed practice, NBCE Ethics Exam and an additional 12 hours CE in record keeping and documentation. Daniel Coté moved to accept the Board’s proposal; Huma Pierce seconded the motion. All in favor. Parker-Kent, aye; Goldeen, aye; McClure, aye; Dick, aye; Coté, aye; and Pierce, aye.

Case # 2011-5008 Diane Monger

The Board proposed to assess a \$7500 civil penalty, pass the NBCE Ethics and Boundaries examination,

and complete 12 hours CE for unlicensed practice. The hours are in addition to the 20 hour annual requirement. Doug Dick moved to accept the Board's determination; Cookie Parker-Kent seconded the motion. All in favor. Coté, aye; McClure, aye; Goldeen, aye; Parker-Kent, aye; Dick, aye; and Pierce, aye.

Case # 2011-1006 The Board determined Case Closed on this matter. Huma Pierce moved to accept the Board's determination; Ann Goldeen seconded the motion. All in favor. Coté, aye; Dick, aye; Pierce, aye; McClure, aye; Goldeen, aye and Parker-Kent, aye.

Case # 2011-1007 Jonathan Preiss DC

The Board proposed to issue a \$2500 Civil Penalty for claiming a specialty not possessed and lacking clinical justification. Joyce McClure moved to accept the determination; Cookie Parker-Kent seconded the motion. All in favor. Dick, aye; Coté, aye; McClure, aye; Parker-Kent, aye; Pierce, aye and Goldeen, aye.

Case # 2011-1010 The Board determined Case Closed with a letter of concern stating, "Yes there is a patient relationship, and you do need to keep the file for seven years." Cookie Parker-Kent moved to accept the determination; Ann Goldeen seconded the motion. All in favor. Pierce, aye; McClure, aye; Coté, aye; Parker-Kent, aye; Dick, aye; and Goldeen, aye.

Case # 2011-1013 The Board determined Case Closed on this matter. Doug Dick moved to accept the determination; Daniel Coté seconded the motion. All in favor. Goldeen, aye; Parker-Kent, aye; McClure, aye; Pierce, aye; Coté, aye; and Dick, aye.

Case # 2011-3010 The Board found no statutory violation. Ann Goldeen moved to accept the board's determination; Huma Pierce seconded the motion. All in favor. Parker-Kent, aye; McClure, aye; Coté, aye; Dick, aye; Goldeen, aye; and Pierce, aye.

Case # 2011-5006 Loren Bassett

The Board proposed to issue a letter of concern with a \$750 civil penalty. Doug Dick moved to accept the determination; Cookie Parker-Kent seconded the motion. All in favor. McClure, aye; Goldeen, aye; Pierce, aye; Coté, aye; Dick, aye and Parker-Kent, aye. (*A Final Order by Default was issued on 7/6/2011.*)

4:35 PM ADJOURN for the day