



Oregon

John A. Kitzhaber, MD, Governor

Oregon Board of Chiropractic Examiners

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Public Session Minutes
Morrow Crane Building
2nd Floor Board Room, Salem, Oregon
October 6, 2011

Members Present

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

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

CONVENE 1:00 p.m.

ADOPTION OF THE AGENDA – adopted as presented

PUBLIC COMMENTS - none

DISCUSSION ITEMS

1. Policy Issue: Dry Needling update

Nothing new – the stay is in effect. The board's share of the work is done; now the matter goes before a panel of appeal judges. Dr. Goldeen added that she was asked at the recent FCLB conference to give a presentation on dry needling; other states are looking to add dry needling to their scope of practice. The Montana Executive Director asked what we've done, what it is, etc. Their medical board declared dry needling as a surgical procedure.

2. Administrative Statutes/Rules review

Dr. Goldeen proposed the board take a thorough look at the Oregon Revised Statutes and the Oregon Administrative Rule; it hasn't been done in a while. Any possible rule changes would be referred to the Rules Advisory Committee for their recommendations. Changing the ORS requires a different process including the legislature. Continue the discussion at a further meeting.

3. Committee Appointments (Peer Review, Rules, ETS DP)

The Board interviewed two people today for appointment to its Peer Review Committee. Dr. Daniel Coté moved to appoint Drs. Jaylene Lewis and Franchesca Vermillion to the Peer Review Committee. Dr. Todd Bilby seconded the motion. All in favor. Cookie Parker-Kent, aye; Ann Goldeen, aye; Doug Dick, aye; Daniel Coté, aye; Christine Robinson, aye and Todd Bilby, aye. Motion carried. There are more interested persons the Board will review next meeting.

4. LMT/Any Trained Person issues; re: billing, CMS Form 1500, supervision, independent contractors vs. employees. This discussion is held over the next board meeting.



5. **2:20 PM Public Hearing on Proposed Administrative Rules - Accepting Graduates of foreign chiropractic colleges whose regional CCEs are part of the Council on Chiropractic Education International.**

2:20 pm Hearing opened (no public appeared).

2:22 pm Hearing closed.

Board discussion: This discussion was brought to light initially with another graduate from a college in another country; that matter settled itself and now, the board has a potential applicant from an Australian college. Amending these rules will help in processing that application. Even though this rule will help many, Dr. Brimhall, President of University of Western States, warned the Board that some schools are not affiliated with the CCE, and we should be cautious.

Motion for rule changes. Dr. Daniel Cote moved to adopt the amendments to OAR 811-020-0006, 811-020-0011 (with one edit), and 811-021-0005. Dr. Todd Bilby seconded the motion. All in favor. Parker-Kent, aye; Cote', aye; Dick, aye; Robinson, aye; Goldeen, aye; and Bilby, aye.

The amended rule language is made a part of these minutes and can be found added onto the end.

6. **FCLB Regional Meeting Report** (Drs. Goldeen and Cote)

Drs. Goldeen and Cote recently returned from FCLB's meeting and reported on issues other boards are facing and FCLB directions. FCLB has filed a 501c3 and is now a non-profit organization.

The CCE has changed the minimum educational requirements for entrance into a CCE college – the minimum GPA will be 3.25, and, the science prerequisite is changed. CCE is moving toward giving guidelines to colleges that are outcomes based rather than specific course based.

Nine state boards currently regulate chiropractic assistants. FCLB has started developing criteria for a national CA certification training. The current didactic portion of the training teaches physical therapy modalities; rehabilitation may be added later.

North Dakota has a process to review new equipment, devices and treatments *yearly* and update their manual. They suggested letting doctors know that new equipment and devices need to be cleared with the board before investing. Dr. Goldeen suggested the OBCE may want to consider doing this too.

Oklahoma has empowered their investigator to issue tickets for lower level, non-reportable offenses. Dave McTeague added that health board directors looked at this recently, asked for legal advice etc., and we ran into all kinds of problems. Dr. Cote would like to know how Oklahoma has managed it. Again, tickets would only be issued for the low level issues.

Boards were warned of a new scam – it is a very expensive piece of equipment that guarantees a cure for cancer. It has shown up in Nevada.

Lastly, Board members were asked to donate something great to the FCLB auction to be held at the national meeting in May 2012 in San Antonio. If something of value is donated, a receipt will be provided.

7. Staff Report

Dave discussed budget policy package options for 2013 Legislature. These have to be initially presented to the state budget analyst by Spring of 2012. Dave says we need to build up the professional services side of our budget. Our professional services budget covers contract investigators, per diem for the Peer Review Committee, expert witnesses, Administrative Law Judge billings, and chiropractic consultants (e.g. file reviews). He said we have been successful in increasing our budget for necessary legal services. However, recently we have been using more chiropractic consultants for file reviews etc. and expert testimony at hearings. Dave pointed out that with board and peer review members already contributing at a maximum level, we need to significantly enhance our budget for chiropractic expert consulting. Dave would like to propose an increase in the per diem for the Peer Review Committee members to be equivalent to the board members' per diem in recognition of their increasing contributions in time and expertise.

Doug Dick asked about some of our costs such as psychological evaluations. The OBCE requires licensees to pay for those themselves; rarely do we pay for those. In regards to collection of fines etc. we are actively collecting debt owed the OBCE, but those monies are not easily collected. We make multiple attempts to collect directly from the licensee. When that doesn't work, we refer the account to either the Department of Revenue or a private collection firm. We also have lien authority, and we have used that.

Dr. Goldeen and Dave McTeague talked about having a strategic planning/goal setting retreat. We have not had one in years. We could have an outside consultant assist and; we would create a survey beforehand to identify the key issues. Dr. Goldeen came away from the FCLB conference believing in the importance of boards to have goals, and to track the board's success meeting those goals. The Board can discuss options. The board briefly discussed dates (March 2012 as the most likely) and will continue planning the details.

July CE mandates – two hours each in boundaries/ethics and charting. We're in the process of fine-tuning the how and when details, including what courses will be available, and how will the requirement fit into the monthly renewal process, etc. Staff will present a proposal.

Dave made a brief mention about Brian Kelly from State Farm making inquiries with the Board of Massage about chiropractic assistants performing massage. This is just an FYI. Lori Lindley, AAG, thinks it might be a billing issue. The Board has discussed this issue a number of times and has repeatedly determined that a CA may perform a massage under the direct supervision after the doctor has evaluated the patient and prescribed a physical therapy modality of massage as part of the treatment.

CORRESPONDENCE

1. **BioPhotonic Scanner, Joanna Sutton DC**

Ms. Sutton has been asked to fill in an ETSDP application for committee review. We're not taking action until we receive the application. Dr. Cote asked if the board wants to draft a blanket statement that licensees should not use this device until reviewed. Dr. Coté proposed that the board consider approving any device before a licensee use it. Does the board want to create a list of devices? The devices could be listed in a broader range – for example traction, electrical stim, thermography, etc. Put this discussion “approve any device prior-to-use” on the retreat agenda.

2. CAs and Inclinometers, Michael Arnot DC and Matthew Hauck CA

The board maintained that chiropractic assistants may not use an inclinometer – it is an exam. A change to the statute would be required.

IN THE MATTERS OF

Case #s 2011-3021 and 1998-1014 Bryan Scott DC

1st motion – The Board proposed to issue a Notice for Emergency Suspension Cookie Parker-Kent moved to accept the determination; Daniel Coté seconded the motion. All in favor.

2nd motion – The Board proposes to issue a Notice of Revocation. Cookie Parker-Kent moved to accept; and Doug Dick seconded the motion. All in favor. Bilby, aye; Dick, aye; Parker-Kent, aye; Robinson, aye; Cote, aye and Goldeen, aye.

3rd motion – The Board authorized Dave McTeague to share information of case #2011-3021 with the Naturopathic Board. Cookie Parker-Kent moved to accept the motion; Christine Robinson seconded the motion. All in favor. Bilby, aye; Dick, aye; Parker-Kent, aye; Robinson, aye; Cote, aye and Goldeen, aye.

Case #2010-1019 and 2011-1028 Todd Hansen DC

The Board proposed to amend the notice to add a second case into the original notice of proposed revocation. The Board authorized the Executive Director to issue a press release about the Notice to Revoke. Ann Goldeen moved to accept the determination; Daniel Coté seconded the motion. All in favor. Bilby, aye; Dick, aye; Parker-Kent, aye; Robinson, aye; Cote, aye and Goldeen, aye.

Case #11-1002, 11-5018 E. Monger DC

Case #11-5008, 11-5019 D. Monger DC

The Board proposed to amend each existing order (#11-1002 and #11-5008) to include new case numbers (11-5018, 11-5019) regarding the additional allegations for sub standard chart notes. Daniel Coté moved to accept the board's determination; Christine Robinson seconded the motion. All in favor. Bilby, aye; Dick, aye; Parker-Kent, aye; Robinson, aye; Cote, aye and Goldeen, aye.

Case #11-1009

The Board found no statutory violation. Doug Dick moved to accept the determination; Daniel Coté seconded the motion. All in favor. Bilby, aye; Dick, aye; Parker-Kent, aye; Robinson, aye; Cote, aye and Goldeen, aye.

Case #11-1004

The Board proposed Case Closed. Ann Goldeen moved to accept the determination; Cookie Parker-Kent seconded the motion. All in favor. Bilby, aye; Dick, aye; Parker-Kent, aye; Robinson, aye; Cote, aye and Goldeen, aye.

Case #11-1007

The Board proposed to dismiss the notice and close the case. Daniel Coté moved to accept the determination; Cookie Parker-Kent seconded the motion. All in favor. Bilby, aye; Dick, aye; Parker-Kent, aye; Robinson, aye; Cote, aye and Goldeen, aye.

Case #2011-1022, 2011-1035, 2011-1036 and 2011-1037 Scott Wallace DC

The Board proposed a two year suspension; permanent probation; a psychological evaluation with

conditions to follow psychologist's recommendation for one year, pass the NBCE ethics exam within 2 years; Affiliated Monitors mentoring (set up by time he returns to practice) for three years; must have a chaperone when treating female patients; must be available for board interview upon request; PROBE within one year; \$5000 civil penalty (must be paid before he can return to licensure). Ann Goldeen moved to accept the Board's determination; Daniel Coté seconded the motion. Bilby, aye; Dick, aye; Parker-Kent, aye; Robinson, aye; Cote, aye and Goldeen, aye.

Case #'s 2011-1011, 2011-1024, 2011-1025 and 2011-3011 Steven Ellsworth DC

The Board proposed to issue a Notice of Proposed Revocation of licensee. Cookie Parker-Kent moved to accept the determination; Doug Dick seconded the motion. All in favor. Bilby, aye; Dick, aye; Parker-Kent, aye; Robinson, aye; Cote, aye and Goldeen, aye.

Case #11-1015

The Board found no statutory violation. Ann Goldeen moved to accept the determination; Cookie Parker-Kent seconded the motion. All in favor. Bilby, aye; Dick, aye; Parker-Kent, aye; Robinson, aye; Cote, aye and Goldeen, aye.

Case #11-1016

The Board found no statutory violation. Todd Bilby moved to accept the determination; Cookie Parker-Kent seconded the motion. All in favor. Bilby, aye; Dick, aye; Parker-Kent, aye; Robinson, aye; Cote, aye and Goldeen, aye.

Case #11-1029

The Board found no statutory violation. Ann Goldeen moved to accept the determination; Daniel Coté seconded the motion. Robinson is recused. Bilby, aye; Dick, aye; Parker-Kent, aye; Cote, aye and Goldeen, aye. Motion passed.

Case #11-1032

The Board proposed a Case Closed. Doug Dick moved to accept the determination; Cookie Parker-Kent seconded the motion. Ann Goldeen is recused. Bilby, aye; Dick, aye; Parker-Kent, aye; Robinson, aye; and Cote, aye. Motion passed

Case #11-1021 James Warner DC

The Board proposed to issue a Notice of Civil Penalty for \$1000 (payable within 30 days) and a Letter of Reprimand for failure to release records. Doug Dick moved to accept the determination; Cookie Parker-Kent seconded the motion. All in favor. Bilby, aye; Dick, aye; Parker-Kent, aye; Robinson, aye; Cote, aye and Goldeen, aye.

Case #11-1027

The Board proposed Case Closed with a Letter of Concern. Daniel Coté moved to accept the determination; Cookie Parker-Kent seconded the motion. All in favor. Bilby, aye; Dick, aye; Parker-Kent, aye; Robinson, aye; Cote, aye and Goldeen, aye.

Case #11-3015

The Board found no statutory violation. Todd Bilby moved to accept the determination; Cookie Parker-Kent seconded the motion. All in favor. Bilby, aye; Dick, aye; Parker-Kent, aye; Robinson, aye; Cote, aye and Goldeen, aye.

Case #11-3012

The Board found no statutory violation. Cookie Parker-Kent moved to accept the determination; Daniel Coté seconded the motion. All in favor. Bilby, aye; Dick, aye; Parker-Kent, aye; Robinson, aye; Cote, aye and Goldeen, aye.

Case #11-3013 Robin Voorhees DC

The Board proposed a 60 day suspension, a Letter of Reprimand completion of the NBCE Ethics and boundary exam (within 6 months); six hours of boundary CE (within 60 days). Christine Robinson moved to accept the Board's determination; Cookie Parker-Kent seconded the motion. Four in favor; two opposed. Vote: Cote, aye; Robinson, aye; Parker-Kent, aye; and Dick aye. Drs. Bilby and Goldeen opposed. Motion passed.

Case #10-1032 Ross Hart DC

The Board proposed to issue a Letter of Reprimand with 14 hours of IME continuing education and 12 hours CE in clinical justification, both to be completed within 6 months. The Board assessed a \$2500 civil penalty due within 60 days; and \$2500 restitution to the patient due within 60 days also (and payable to the patient but to be sent to the OBCE as proof of compliance). Daniel Coté moved to accept the determination; Cookie Parker-Kent seconded the motion. All in favor Bilby, aye; Dick, aye; Parker-Kent, aye; Robinson, aye; Cote, aye and Goldeen, aye.

Case #11-2001 Christopher Beardall DC

The Board proposed to amend the notice and combine this case with case #2010-2000 with all the same provision (as 10-2000). The mentoring is increased to three years to be performed by Affiliated Monitors. Ann Goldeen moved to accept the determination; Cookie Parker-Kent seconded the motion. All in favor. Bilby, aye; Dick, aye; Parker-Kent, aye; Robinson, aye; Cote, aye and Goldeen, aye.

Case #10-1005 Leif Choi DC

The Board proposed a \$5000 civil penalty (payable within 60 days or license will be suspended). Six hours of CE in clinical justification, six hours CE covering x-ray and x-ray shielding, and six hours CE in chart noting – the total 18 hours education is in addition to the annual requirement and to be completed within six (6) months. The Board also proposed a two-year probation and mentoring with Affiliated Monitors, and file pulls by OBCE. Daniel Coté moved to accept the determination; Doug Dick seconded the motion. All in favor. Bilby, aye; Dick, aye; Parker-Kent, aye; Robinson, aye; Cote, aye and Goldeen, aye.

Case #11-5021 Susan Gray DC

The Board proposed to issue Notice to Suspend for failure to comply with the Board's previous Stipulated Final Order. Ann Goldeen moved to accept and Daniel Coté seconded the motion. All in favor. Bilby, aye; Dick, aye; Parker-Kent, aye; Robinson, aye; Cote, aye and Goldeen, aye.

Chiropractic Assistant Applicant Catherine Siemers

The Board proposed to issue the license to the CA applicant with the standard stipulations for disclosure. Daniel Coté moved to accept the determination; Cookie Parker-Kent seconded the motion. All in favor. Bilby, aye; Dick, aye; Parker-Kent, aye; Robinson, aye; Cote, aye and Goldeen, aye.

Case #09-1009 Brent Warner DC

The Board proposed to issue a Notice to Suspend for non-payment of the civil penalty owed the OBCE.

In addition, the Board proposed to add the psychological evaluation recommendation to any future stipulated final order in lieu of the PROBE requirement. The civil penalty must be paid prior to returning to practice. Cookie Parker-Kent moved to accept the determination; Doug Dick seconded the motion. All in favor. Bilby, aye; Dick, aye; Parker-Kent, aye; Robinson, aye; Cote, aye and Goldeen, aye.

Chiropractic Assistant Applicant Ann Akar

The Board proposed to deny the CA license based on the previous history. Cookie Parker-Kent moved to accept the determination; Christine Robinson seconded the motion. All in favor. Bilby, aye; Dick, aye; Parker-Kent, aye; Robinson, aye; Cote, aye and Goldeen, aye.

3:00 pm ADJOURN

Today's Amended Administrative Rules

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. 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) 120 hours is required in physiotherapy. Any chiropractic physician also licensed as a physical therapist is exempt from this requirement.

(2) 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).

811-020-0011 List of Approved Schools

The list of approved programs shall be made available as published by the Council on Chiropractic Education and approved by this board, along with any other educational programs that are recognized and endorsed by CCE and approved by this Board.

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 22, 2011, is hereby adopted and prescribed.