



Oregon

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Oregon Board of Chiropractic Examiners

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Public Session Minutes

Morrow Crane Bldg, 1st Floor Conference Rm

3218 Pringle Rd S Ste. 150, Salem, OR 97302

September 23rd, 2010

Members Present

Michael Vissers DC Vice-President (Chairing)

Ann Goldeen DC

Daniel Cote DC

Huma Pierce DC (Teleconference)

Douglas Dick, Public Member

Cookie Parker-Kent, Public Member

Staff Present

Dave McTeague, Executive Director

Katie Hambelton, Office Specialist

Tom Rozinski, Investigator

Lori Lindley, Assistant AG

Excused: Joyce McClure DC

12:40 PM CONVENE

ADOPTION OF THE AGENDA As presented.

PUBLIC COMMENTS None

DISCUSSION ITEMS

- 1. ETSDP: Zerona Laser (Proposed Study if any.)** Dr. Goldeen discussed a study that's happening at Texas Chiropractic College with Erchonia. Dr. Goldeen wrote to Erchonia and has not received a response. She said Dr. Corll is now leasing out his machine. She said UWS(CC) said a study would cost ½ million dollars. Dr. Goldeen proposed a data collection protocol for DCs to monitor all of the patients that are receiving Zerona treatments for the purposes of a study (weight, BMI, blood chemistry, follow for two years). Lori discussed if it was in cosmetology scope of practice. Dr. Goldeen suggests that they have a form filled out that is a standard form for everyone. They would have to send this to the board. Dr. Vissers discussed that in January we allowed chiropractors to use the machines until they are finished treating their current patients. Dr. Vissers and Dr. Cote said that people are receiving Zerona treatments for cosmetic purposes not health purposes. Because it isn't taught in the chiropractic school right now, they can't do it according to Dr. Cote. Dr. Vissers thinks it needs to be part of the actual core curriculum. Erchonia has issued a press release about FDA approval, but no FDA documents have been provided to the OBCE. Board members debated the potential health benefits. The Board makes no change until they receive a proposal for a long term study as previously indicated. Currently, Oregon DCs may finish up treatment of existing patients but may not begin treatment of new Zerona patients.
- 2. New Rules Review** Dave started discussing implementation of this relatively new law, ORS 183.405 (4) & (5). The Attorney General's office had sent out a memo in August reminding all state agencies of this. The new law says before the end of five years (since 2006) state agencies have to review those new rules and issue a report, as well as letting the Rules Advisory Committee (RAC) look at it. (This applies only to new rule sections and does not apply to existing rules that were amended.) The OBCE adopted two new rules in 2006 rules (criminal background checks and other

health professionals). Dave wrote a draft report on these that they were working and still needed. This was reviewed by the RAC who responded by email stating the rules are still needed. Daniel Cote moved to adopt the report and Ann Goldeen seconded; the motion passed unanimously. Michael Vissers, aye; Cookie Parker-Kent, aye; Ann Goldeen, aye; Daniel Cote, aye; Huma Pierce, aye; and Doug Dick, aye.

3. **Staff Report.** Dave said we are having our next meeting in November in Silverton. Also, the budget projections have improved. We are now approximately \$10,000 under budget instead of \$15,000 over budget in the last report. At the rate we're using legal services (AAG) we're still projected to be over budget for that line item by over \$40,000. If it wasn't for the cost of living and merit pay freezes we would be over our total budget and would have needed to request additional expenditure authority from the Legislature's Emergency Board. Dave projects continuing high expenditures for contested cases and hearings for the remainder of the biennium (ending June 30, 2011). He also reported an improvement in revenues for the current biennium to about \$38,000 above the original projections. He reported submitting the Agency Request Budget (ARB), which now does not request a fee increase, per the Board's deliberations in July. The ARB also requests an additional \$50,000 for AG and legal expenditures. Since the ARB was submitted the Executive Branch is moving to reduce the requested personal service expenditures by 5.5%. This apparently means the freeze on COLAs and merit increases will continue into the 2011-13 biennium. He said that does improve our ending balance projections.
4. **Dry needling.** This was added to the agenda. Dr. Cote said if this is added to the scope of practice there needs to be a proposal for a certain amount of required training. Dr. Pierce provided a statement from the Oregon Chiropractic Association that they support dry needling in the scope of practice. Dave says that UWS(CC) has planned a 12 hour CE class on dry needling. Dave said he was still under the Board's direction to let the Acupuncture Board know this is still under consideration by the OBCE. There was discussion about what exactly is being taught at UWS(CC) as no new information has been provided. A report from the state association was distributed at Dr. Pierce's request.

CORRESPONDENCE

1. Practice Question: Homeopathy Scope of Practice (Chris Chlebowski, DC)

The Board was unclear as to whether the product he wants to use is actually over the counter or prepackaged for use by the consumer. There was discussion about the scope of practice and whether it includes homeopathy. Naturopathic can practice homeopathy but not chiropractors. The Board said this should be on the legislative discussion item list since doctors in the field are asking about this.

Subsequent to the meeting, further discussion with Dr. Chlebowski clarified he is referring to OTC homeopathic products provided by Borion. The OBCE responded as follows:

- 1) Give the patient a dose from that vial? *Yes.*
- 2) Send the patient home with a dose from that vial? *Yes.*
- 3) Place a pellet of the over-the-counter remedy in a vial with water to be administered to an infant?
Yes
- 4) Or must I sell them the entire vial of the remedy? *No.*

IN THE MATTERS OF

John Alford, CA Applicant.

The Board proposed to issue the CA applicant's certificate with the standard conditions for notification to chiropractic employers. Parker-Kent moved to accept the Board's determination; Goldeen seconded the motion. All in favor. Cote aye, Vissers aye, Dick aye, Pierce aye, Goldeen, aye, Parker-Kent, aye. (Consent Order signed and case is now closed.)

Swakara Nettles, CA Applicant

The Board proposed to issue the CA applicant's certificate with the standard conditions for notification to chiropractic employers. Doug Dick moved to accept the Board's determination; Parker-Kent seconded the motion. All in favor. Cote aye, Vissers aye, Parker-Kent aye, Goldeen aye, Dick aye, Pierce aye.

Request from the Oregon Board of Massage to release investigative information concerning an applicant. The Board approved this request. Parker-Kent moved to accept the Board's determination; Doug Dick seconded the motion. All in favor. Cote aye, Vissers aye, Parker-Kent aye, Goldeen aye, Dick aye, Pierce aye.

Tristan Squires, CA Applicant

The Board proposed to deny this application for a chiropractic assistant certificate related to a felony conviction for theft. Parker-Kent moved to accept the Board's determination; Pierce seconded the motion. All in favor. Cote aye, Vissers aye, Dick aye, Parker-Kent aye, Pierce aye, Goldeen aye.

Thomas Freedland DC (Case # 2010-1008 et. al.)

The Board proposed to issue a Letter of Reprimand for lack of clinical justification for conclusions found in his examination report. Doug Dick moved, Goldeen seconded the motion. All in favor. Cote aye, Vissers aye, Parker-Kent aye, Pierce aye, Goldeen aye, and Doug Dick aye.

Kevin McCausland DC (Case # 2010-1022)

The Board proposed a Letter of Reprimand related to upcoding, double billing and inadequate exam. Goldeen moved to accept Board's determination, Parker-Kent seconded the motion. All in favor. Cote aye, Vissers aye, Dick aye, Pierce aye, Parker-Kent aye, and Goldeen aye.

Case # 2010-1018

The Board proposed a determination of No Statutory Violation. Pierce moved to accept Board's determination, Parker-Kent seconded the motion. All in favor. Cote aye, Vissers aye, Dick aye, Goldeen aye, Parker-Kent aye, Pierce aye.

Case # 2010-1024

The Board proposed a determination of insufficient evidence. Goldeen moved to accept Board's determination, Parker-Kent seconded the motion. All in favor. Cote aye, Vissers aye, Dick aye, Pierce aye, Goldeen aye, Parker-Kent aye.

Tuan Ahn Tran

The Board adopted the Administrative Law Judge's revised proposed order and issued a final order in this case imposing a \$201,250 civil penalty for unlicensed practice and related violations. Doug moved to

accept the Board's determination, Parker-Kent seconded the motion. All in favor. Cote aye, Vissers aye, Goldeen aye, Pierce aye, Doug Dick aye, Parker-Kent aye.

Case # 2010-2005

The Board proposed a determination of no statutory violation and a letter of concern regarding some billing issues. Goldeen moved to accept the Board's determination, Parker-Kent seconded the motion. All in favor. Cote aye, Vissers aye, Dick aye, Pierce aye, Goldeen aye, Parker-Kent aye.

Jennifer Fletcher DC (Case # 2009-1010 et al)

The Board proposed a 60 day suspension, 3 year probation with file reviews, visits with the Board for multiple violations related to patient records which do not meet the required minimal standards of care, over treatment, under treatment, billing irregularities, failure to respond to valid release of records requests, failing to teach and/or supervise chiropractic associates/staff, allowing staff to perform tasks while not licensed, failure to notify patients of practice relocation and failure to cooperate during the investigation. Ann Goldeen moved to accept the Board's determination, Parker-Kent seconded the motion. All in favor. Cote aye, Vissers aye, Dick aye, Pierce aye, Goldeen aye, Parker-Kent aye.

James Christy DC (Case # 2010-3006)

The Board proposed a \$500 civil penalty for not disclosing a DUI conviction on 2003 and 2008 renewal applications. Pierce moved to accept the Board's determination, Parker-Kent seconded the motion. All in favor. Cote aye, Vissers aye, Dick aye, Goldeen aye, Pierce aye, Parker-Kent aye.

Lonnie Johnson DC (Case # 2010-3007)

The Board proposed to accept an Agreement of Voluntary Cooperation, subject to Dr. Johnson's agreement, which would require Dr. Johnson to obtain 12 hours of instruction in x-ray technique and diagnosis to address the issues identified in this proceeding. The Agreement would not be a disciplinary action, but is a public document. Cote moved to accept the Board's determination, Vissers seconded the motion. All in favor. Parker-Kent aye, Goldeen aye, Dick aye, Pierce aye, Vissers aye; Cote aye.

Case # 2009-1028

The Board proposed a determination of Case Closed provided the Licensee completes 12 hours of CE related to record keeping, clinical justification and boundaries. Goldeen moved to accept the Board's determination, Parker-Kent seconded the motion. All in favor. Cote aye, Vissers aye, Dick aye, Pierce aye, Goldeen aye, Parker-Kent aye.

Case # 2010-1014

The Board proposed a determination of Case Closed as provided in Case 2009-1028. Goldeen moved to accept the Board's determination, Parker-Kent seconded the motion. All in favor. Cote aye, Vissers aye, Dick aye, Pierce aye, Parker-Kent aye, Goldeen aye.

ADJOURN 1:10 PM